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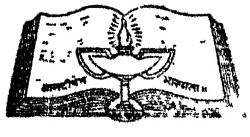
THE

NEGOTIABLE INSTRUMENTS ACT

(XXVI OF 1881)



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TO

SIR NORMAN CRANSTOUN MACLEOD, KT.

CHIEF JUSTICE

OF

H. M'S HIGH COURT, OF JUDICATURE AT BOMBAY

THIS WORK

IS

BY KIND PERMISSION

MOST RESPECTFULLY DEDICATED.

PREFACE TO THE EIGHTH EDITION

In presenting this eighth edition to the public the author has to express his satisfaction at the rapid sale of the first seven editions of this work and an urgent demand for another edition.

So far as the author has been able to ascertain, the book has been found to be a very useful and a popular companion by students preparing for the various law examinations, and has been used as a convenient and handy book of reference by the legal profession. A collection of leading decisions under the appropriate section will provide for the practising lawyer a guide to further research. The practitioner often stands in need of a handy book of reference amidst the rapid occasions of daily practice, and if this book will assist him to any appreciable extent, it will have accomplished its object.

The present edition has been thoroughly revised and brought up-to-date. Nearly six hundred decisions have been cited for the benefit of the practitioner. The author trusts that this revised edition will meet with even greater favour from students and practitioners alike.

HIGH COURT, BOMBAY.
20th February 1948.

J. S. K.

PREFACE TO THE FIRST EDITION

In laying before the public the present volume, the author is fully conscious that he is journeying upon a well trodden path. The object of helping the students preparing for the different law examinations has induced the author to attempt the compilation of this work. In doing so, he thinks it right to premise that the want of such a work has not been unfelt. For though there exist works on Negotiable Instruments, works of acknowledged value and assistance to the practising lawyer and admirably adapted to his needs, yet it will be admitted that some works, besides being generally inaccessible to the student, are not touched by him on account of their formidable size. It is, also, no disparagement of others to say that they do not deal with the subject in a form which the student can easily grasp. Bearing in mind, therefore, that a mass of detailed statement and illustration contained in standard works on this subject might tend to oppress and dishearten the student entering upon a course of legal study, the author has in compiling this little volume, endeavoured to keep within such limits as are proper to a statement of elementary principles, with illustrations enough to explain the rules laid down. Being himself a lecturer in law, the author has some practical acquaintance with the sort of difficulties which beset the beginner, and, he has, therefore, endeavoured in this book to supply the want of the student by setting forth in a concise, connected and easily assimilable form the present state of the law on this subject. Numerous illustrations have been given, and most striking decisions have been cited with the object of illustrating the general rules.

It is not intended that this book should be used as a cram-book, but the author hopes that it may prove of service to the student as an inducement to the study of law on the subject herein dealt with, and that he will find in it much that will save him valuable time and anxious labour. If this manual will assist him to any appreciable extent, it will have accomplished its chief object.

The author acknowledges with gratitude his thanks to Mr. B. J. Wadia, M.A., LL.B., Bar-at-Law, Principal of the Government Law School, Bombay, for suggesting to him the compilation of this work and for offering many valuable suggestions during its progress. The author's thanks are also due to his friend Mr. K. M. Taleyarkhan, B.A., LL.B., Bar-at-Law, for kindly reading through the manuscripts and for giving very useful advice.

HIGH COURT, BOMBAY.
22nd June 1920.

J. S. K.

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(ACT XXVI OF 1881)

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THE
NEGOTIABLE INSTRUMENTS ACT
ACT NO. XXVI OF 1881
(OF 9TH DECEMBER, 1881)

Preamble.

WHEREAS it is expedient to define and amend the law relating to promissory notes, bills of exchange, and cheques, it is hereby enacted as follows :—

CHAPTER I

PRELIMINARY

Short title.

1. This Act may be called the Negotiable Instruments Act, 1881.

Local extent. Saving of usages relating to hundis, etc.

It extends to the whole of British India ; but nothing herein contained affects the Indian Paper Currency Act, 1882, Section 25, or affects any local usage relating to any instrument in an oriental language : Provided that such usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by this Act ; and it shall come into force on the first day of March, 1882.

NOTES

Preamble.—The Law Merchant of England governed negotiable instruments in India prior to the passing of the Negotiable Instruments Act. *Subba Narayana Vathiyar* v. *Ramaswami Aiyar*, 30 Mad. 88.

The Negotiable Instruments Act is based upon the English Common Law relating to promissory notes, bills of exchange, and cheques. It is mainly a codification of the English Common Law on the subject with a few differences probably due to the exigencies of the country to which it has been sought to be applied. The law relating to negotiable securities is based upon certain general principles governing simple contracts in general, and certain special features derived from the usages and customs of merchants judicially ascertained and recognised by Courts of Law as the " Law Merchant." The Law Merchant of England relating to negotiable instruments

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was applied to these instruments in India in the early times. *Subba Narayana Vathiyar* v. *Ramaswami Aiyar,* 30 Mad. 88. Prior to the passing of the Negotiable Instruments Act, where the parties were Europeans, the English Law relating to negotiable securities was applied to them. But where the parties were Hindus or Mahomedans their personal law governed the relations between them. But where the analogy between native *hundies* and English bills of exchange was complete, and there was absence of proof of any special usage, the English Law was held to apply. *Sumboonath Ghose* v. *Judoonauth Chatterjee,* 2 Hyde. 259. When the Indian Law was codified by the Legislature, it becomes clear from the sections of the Negotiable Instruments Act, that the provisions of the English Law have been faithfully reproduced. Hence, in the absence of any special circumstances peculiar to Indian conditions the Indian Courts will be justified in construing the Indian Act conformably to the provisions of the English Law. But those portions of the Law Merchant which the Indian Legislature has seen fit to accept are to be found embodied in the Indian Contract Act and the Negotiable Instruments Act, and therefore it is not competent for the Courts to leave this firm ground and explore the uncertain regions which are imperfectly defined by the phrase, the Law Merchant. Per Batchelor, J. in *Raghunathji Tarachand* v. *The Bank of Bombay,* 34 Bom. 72, 83.

The Act merely regulates the issue and negotiation of bills, notes and cheques, but does not provide for the transmission of rights in such instruments by operation of law or by transfer *inter vivos. Muhammad* v. *Rangarow,* 24 Mad. 654. The Act is therefore not exhaustive of all matters relating to negotiable instruments. The English Law as to negotiable instruments was codified by the passing of the Bills of Exchange Act of 1882 (45 & 46 Vic. c. 61). Though the language and the arrangement of both the English and the Indian Acts differ, they both follow the Common Law.

Application of the Act: Local extent.—The Act extends to the whole of British India, which means, all territories and places within His Majesty's Dominions which are for the time being governed by His Majesty through the Governor-General of India. (General Clauses Act XI of 1897, S. 3, cl. 7). The Negotiable Instruments Act does not affect the provisions of the Indian Paper Currency Act XV of 1882, Section 25. The Indian Paper Currency Act XV of 1882 was repealed by Act III of 1905, and this and the Amending Act II of 1909, have been repealed by the Indian Paper Currency Act II of 1910, which itself was repealed by Act X of 1923. The Paper Currency Act has been repealed by the Reserve Bank of India Act (Act No. II of 1934).

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Local usages.—The Act saves from its operation " any local custom relating to any instrument in an oriental language." *Mangumal Jessa Singh* v. *A. L. V. R. C. T. Firm*, 4 M.L.T. 309 ; *Gulamsa Rawther* v. *Viswanathan Chetty* (1917), M.W.N. 344. The Act applies to promissory notes, bills of exchange, and cheques, but where the instrument is in an oriental language, e.g. a " hundi," a " rukka," any local usage relating to such an instrument applies notwithstanding the provisions of this Act. The effect of this saving clause is not to render the Act altogether inapplicable to " hundis." It is only when there is a local usage to the contrary that the local usage overrides the provisions of the Act. In the absence of proof as to the existence of any such usage, the Act applies as much to " hundis " as to instruments written in the English language. *Krishnaset* v. *Hari Valji*, 20 Bom. 488, 490 ; *Jambu Chetty* v. *Palaniappa Chettiar*, 26 Mad. 526. But such local usage may be excluded by any words in the body of such an instrument indicating an intention that the legal relations of the parties thereto shall be governed by this Act in which case the local usage shall cease to operate. The exemption, however, in favour of instruments in the oriental language, applies, so that the provisions of the Act overriding legal usages do not apply to them.

2. *Repealed by the Regulation and Amending Act, 1891 (XII of 1891).*

Interpretation clause.

3. In this Act—" Banker "—includes also persons or a corporation or company acting as bankers ; and " Notary Public " includes also any person appointed by the Governor-General-in-Council to perform the functions of a Notary Public under this Act.

NOTES

Bank—Banker—Notary public.—A *bank* is a corporation, partnership, or individual carrying on the business of banking. It is " an establishment which trades in money, an establishment for the deposit, custody and issue of money, and also for granting loans, discounting bills, and facilitating the transmission of remittances from one place to another."

The Act does not define the term " banker." A *banker* is a person who receives the money of his customer to be drawn out again as the owner has occasion for it, the customer being the lender and the banker the borrower, with the superadded obligation of

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honouring the owner's cheques upto the amount of the money received and still in his hands. *Foley* v. *Hill* (1848), 2 H.L.C. 28, 43.

A *notary public* is an officer who takes notes of anything which may concern the public ; he attests deeds or writings to make them authentic in another country, but principally in mercantile affairs so as to make protests of bills of exchange, etc.

CHAPTER II

OF NOTES, BILLS AND CHEQUES

"Promissory note."

4. A "promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Illustrations

A signs instruments in the following terms:—

(*a*) "I promise to pay *B*, or order Rs. 500."

(*b*) "I acknowledge myself to be indebted to *B* in Rs. 1,000 to be paid on demand, for value received."

(*c*) "Mr. *B*, I. O. U. Rs. 1,000."

(*d*) "I promise to pay *B* Rs. 500 and all other sums which shall be due to him."

(*e*) "I promise to pay *B* Rs. 500, first deducting thereout any money which he may owe me."

(*f*) "I promise to pay *B* Rs. 500 seven days after my marriage with *C*."

(*g*) "I promise to pay *B* Rs. 500 on *D*'s death, provided *D* leaves me enough to pay that sum."

(*h*) "I promise to pay *B* Rs. 500 and to deliver to him my black horse on 1st January next."

The instruments respectively marked (*a*) and (*b*) are promissory notes. The instruments respectively marked (*c*), (*d*), (*e*), (*f*), (*g*) and (*h*), are not promissory notes.

NOTES

Promissory notes: Requisites.—The definition of a promissory note in Section 4 is exhaustive and excludes from the category of promissory notes instruments which do not fall within its terms. *Jetha Parkha* v. *Ramchandra Vithoba*, 16 Bom. 689. Upon a careful

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examination of the definition it will be noticed that the following essentials are necessary :—

(I) The promissory note must be in writing.—The object of this requirement is to exclude oral engagement to pay from the purview of the Act. Every engagement connected with a promissory note must be signified by writing upon the instrument itself. The writing may be in pencil or ink, and writing shall be construed as including printing, lithography, and other modes of representing or reproducing words in a visible form. General Clauses Act, Section 3(58). No particular form of words is necessary to the validity of a promissory note provided the requirements of this section are complied with. *Brooks* v. *Elkins* (1836), 2 M. & W. 74 ; *Hooper* v. *Williams* (1848), 2 Exch. 20. An instrument, however, might satisfy the requirements of this section, and yet not be a promissory note. Thus a banker's deposit note in the form, " Received of *A* Rs. 500 to be accounted for on demand " and signed by the maker is not a promissory note. *Hopkins* v. *Abbott* (1875), L.R. 19 Eg. 222. Further, the instrument must be such as to show the intention to make a note. *Sibree* v. *Tripp* (1846), 15 M. & W. 23. The instrument may be written in any language but when it is in an oriental language, it is a *hundi* and may be subject to local usages (See S. 1.). It is not necessary that the word " promise " should be used, provided the language used shows clearly an intention on the part of the maker to give an unconditional undertaking to pay the amount. *Casborne* v. *Dutton* (1727), Sel. N.P. 13th Edn., 1st Vol., 329.

(II) The promissory note must contain an undertaking to pay.—The essential element of a promissory note is an express promise to pay. A mere acknowledgement of indebtedness without an express promise to pay the debt is not a promissory note. Thus, the following are not promissory notes :—

(1) " Mr. *X*, I owe you Rs 100."

(2) " I have received Rs. 1,000 which I borrowed of you, and I have to be accountable to you for the same with interest." *Horne* v. *Redfearn* (1838), 4 Beng. N C. 433

(3) " The amount which I have this day received from you in cash is Rs. 1,000. This sum I am bound to pay to you."

(4) " Deposited with me Rs. 1,000 to be returned on demand."

(5) " I am liable to *A* in a sum of Rs. 1,000 which is to be paid by instalments for rent." *Moffat* v. *Edwards* (1841), Car. & M. 16; *Follett* v. *Moore*, 4 Ex. 410.

Where a document was in the following terms :—

" This receipt is hereby executed by *B* for Rs. 43,900 . . . received from the firm of . . . for and on behalf of *A*. The amount to be

payable after two years. Interest at the rate of Rs. 5-4-0 per cent per year to be charged. Dated April 1, 1917".

The Privy Council held that the document was a receipt for money containing the terms on which it was to be repaid; and being primarily a receipt, even if coupled with a promise to pay, it was not a promissory note, or a document which was to be a negotiable instrument within the meaning of Sections 4 and 13 of the Negotiable Instruments Act, 1881. *Sir Mahomed Akber Khan* v. *Attar Singh*, 38 B.L.R. 739.

A mere acknowledgement of indebtedness does not constitute a promissory note. *Laxmibai* v. *Ganesh Raghunath*, 25 Bom. 373. But if in addition to an acknowledgement of indebtedness there is an express promise to pay the amount acknowledged to be due, the instrument is a promissory note. *Tirupathi* v. *Rama Reddi*, 21 Mad. 49; *Maneckchand* v. *Jamoona Dass*, 8 Cal. 645. Thus the following are good promissory notes :—

(1) "Rs. 1,000 balance due to you I am still indebted and do *promise* to pay." *Chadwick* v. *Allen* (1725), 2 Stra. 706.

(2) "Received of *X* Rs. 1,000 which I *promise* to pay on demand with interest." *Green* v. *Davis* (1825), 4 B. & C. 235.

(3) "I do acknowledge myself to be indebted to *X* in Rs. 1,000 *to be paid on demand* for value received." *Casborne* v. *Dutton* (1727), Sel. N.P. 13th Ed., 1st Vol., 329.

(4) "We shall order the borrowed moneys to be repaid." *Sri Yerruganti Chinna* v. *Kota Egiri* (1913), M.W.N. 1005.

(5) "Whereas with regard to glass of Hanuman Glass Works account is due from us, we therefore acknowledge and promise to pay on demand Rs. 1,781 with interest at two per cent per mensem." *Sushil Chandra Chaturvedi* v. *Wali Ullah* (1911), All. 264.

(6) A document was as follows: "We have executed this promissory note for a total sum of Rs. 2,400 ... made up of ... On demand by you (we) will pay the amount of this promissory note along with compound interest at 13 annas per cent per month with annual rests. (We) have executed this promissory note." A four-anna revenue stamp had been affixed. The document purported to be signed by the executants! *Held*, it was a promissory note. *Balmukund Jamarayan* v. *Ambadas Damodhar*, A.I.R. (33), 1946 Nagpur 81.

But where an instrument contains an acknowledgement of indebtedness without an express promise to pay, though it is not a promissory note, it is valid as an agreement and may be sued upon as such. *Laxmibai* v. *Ganesh Raghunath*, 25 Bom. 373.

A promissory note payable on demand does not imply that a demand must be made. The words "on demand" only mean that the note is payable immediately or at sight and do not in themselves

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take the promissory note out of the terms of Section 49 of the Indian Contract Act, 1872. *Jivatlal Purtapshi* v. *Lalbhai Shah*. 44 B.L.R. 495.

The phrase "payable on demand" necessarily implies a promise to pay, and a promissory note expressed to be payable on demand is a promissory note within the meaning of this section. The expression "on demand" is a mere technical expression meaning that the amount mentioned in the instrument is payable at once or immediately, but it does not import a condition that a demand ought to be made before payment can be enforced. *Ram Chunder Ghosaul* v. *Juggutmon Mohiney*, 4 Cal. 283, 294. But a holder who sues on an "on demand" instrument without having first demanded payment thereon, may be made to pay the costs of the action, if the debtor shows that he was always ready and willing to pay. But where a note is payable 'after demand' or 'when demanded' it is not deemed to be payable till an actual demand has been made. Where a promissory note payable on demand is accompanied by a writing, which postpones the time for payment to a fixed period, such a writing is a valid and an enforceable agreement. *Annamalai* v. *Velayuda Nadar*, 39 Mad. 129. Of course, the negotiable character of the promissory note is not destroyed, and *bona fide* holders without notice of the accompanying agreement in writing will be protected, even if they sued before the term mentioned in the accompanying agreement had expired. But as between the parties to the note and as between the drawer and holders with notice or holders who are not holders in due course, the accompanying agreement would be enforced (*Ibid*). Where there is an express promise to pay, an instrument will not the less be a promissory note because it contains expressions of politeness or gratitude. *Ruff* v. *Webb* (1794), 1 Esp. 129.

A promissory note does not lose its character as such merely because it contains a promise to pay at a certain place. *Bhagwandas Tataram* v. *Chaganlal Raichand*, 46 B.L.R. 411

(III) The promise to pay should be unconditional.—It is essential to the validity of a promissory note that the promise to pay contained in the note should be *unconditional*. Certainty is the great object in negotiable instruments, and unless they carry their own validity on the face of them they are not negotiable. On that ground notes which are only payable on a contingency are not negotiable, because it does not appear on the face of them whether or not they will ever be paid. *Carlos* v. *Fancourt* (1794), 5 T.R. 482. "It would perplex the commercial transaction of mankind if paper securities of this kind were issued out into the world, encumbered with

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conditions and contingencies and if persons to whom they were offered in negotiation, were obliged to inquire when these uncertain events would probably be reduced to certainty." Per Lord Kenyon in *Carlos* v. *Fancourt* (1794), 5 T.R. 482, 485. As an instrument must be valid *ab initio* and carry its own validity on its face, if drawn payable conditionally on the happening of an uncertain event, it remains invalid even if the event happens before the expiry of the period fixed for the performance of the obligation. *Hill* v. *Halford* (1801), 2 Bas. & P. 413.

Examples of conditional promissory notes :—

(1) "I promise to pay *X* Rs. 5,000 by instalments with a proviso that no payment shall be made after my death." *Worley* v. *Harrison* (1835), 5 Neo. & M. 173.

(2) A letter requesting a loan stating that the amount lent will be repaid is not a promissory note because the re-payment is dependent on the advance being made. Thus "Rs. 100 already received, Rs. 500 is also required. Please send it per bearer. The amount will be returned with interest at 6 per cent without delay" is not a promissory note. *Bharata Pisharodi* v. *Vasudevan Nambudri*, 27 Mad. 1; *Dhondbhat* v. *Atmaram*, 13 Bom. 669.

(3) "I promise to pay *X* Rs. 500 on *A*'s death provided he leaves me sufficient to pay the said sum" is conditional and void as a promissory note. [See also Illus. (*g*) to the Section.] *Roberts* v. *Peake* (1757), 1 Burr. 323.

(4) An instrument containing a promise to pay a certain sum to *X* a certain time after his marriage is not a good promissory note, for *X* may not marry at all. *Bardesley* v. *Baldwin* (1741), 3 Stra. 1151; *Pearson* v. *Garrett* (1643), 4 Mad. 242 [See illus. (*f*) to S. 4.]

(5) "I promise to pay *AB* Rs. 500 out of money due to me from *XY* as soon as *XY* pays it" is conditional because *XY* may never pay the money.

(6) "I promise to pay on demand at my convenience." The words "at my convenience" import a condition, and the writing is not a promissory note. *Nathoobha* v. *Himatlal*, 23 Bom. L.R. 1231.

A promise to pay is not "conditional" within the meaning of this section if it depends upon an event which is certain to happen though the time of its happening may be uncertain. Thus, a promissory note in this form : "I promise to pay *X* Rs. 500 seven days after the death of *AB*" is not conditional, for it is certain that *AB* will die, though the exact time of his death is uncertain. (See S. 5.)

(IV) The promissory note must be signed by the maker.—Until the maker of a promissory note affixes his signature thereto the instrument is incomplete and of no effect. But a person executing a promissory note cannot be held in law to have the position of a surety. There is an essential antithesis between the legal position of a surety and that of the executant of a promissory note, and so a person who executes a promissory note cannot be held in law to

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have the position of a surety. *Behari Lal* v. *Allahabad Bank,* A I.R. (1929), All. 664. The maker of a note, the drawer of a bill of exchange or cheque or an indorser may, if he is unable to write his name, sign by a mark. [See S. 3 (52) General Clauses Act]. *George* v. *Surrey* (1830), M. & M. 516; *Baker* v. *Dening* (1838), 8 A. & E. 94. A signature in pencil is valid. *Geary* v. *Physic* (1826), 5 B. & C. 234. Signature is ordinarily understood to mean the writing of a person's name in order to authenticate and give effect to the contract contained in the document. Hence the signature need not be in any particular part of the instrument. *Mathura Das* v. *Babu Lal,* 1 All 683, *Mahalakshmi Bai* v. *The Firm of Nageshwar,* 10 Bom. 71. Mere marks and initials have been held to be signature, if they were intended to be such. The words "writer's self" or "my own handwriting" written at the foot of an instrument whereby the writer declares himself to be bound, may be a sufficient signature. *Jeannissa Begum* v *Manekji Khaisetji,* 6 Bom H C R 36 Further it is an essential requirement of a signature that the mind of the signor should accompany the signature, in other words, the executant should intend to subscribe to the terms of the document.

(V) The maker must be certain.—It is of the utmost importance that the promissory note should point out with certainty the person who enters into the contract and engages or undertakes to pay. A promissory note may be made by several persons jointly or jointly and severally. Where a promissory note is drawn in the form "I promise to pay" and is signed by *A, B & C,* it is deemed to be their joint and several note. *Merch* v. *Ward* (1792), 1 Peak 177. But a note, however, in the form, "I promise to pay" and signed by *A,* a partner of a firm, on behalf of himself and his co-partners is a note on which *A* is not severally liable, but it is a joint note of all the partners. *Ex parte Buckley* (1845), 14 M. & W. 475. "A joint and several note, though on one piece of paper, comprises in reality and in legal effect several notes. Thus *A, B & C,* join in making a joint and several promissory note, there are, in effect, four notes. There is the joint note of the three makers, and there are also several notes of each of the three". *Beckham* v. *Smith* (1858), 27 L.T.Q.B. 257. Byles on Bills 17th. Ed. p. 9. But a note cannot be made in the alternative or with a several liability. *Ferries* v. *Bond,* 4 B. & Ad. 679. Thus, a promissory note in the form "I *J. C.* promise to pay" and signed by "*J. C. or also H. B.,*" is not a good note as regards *H. B.,* but is a good note as against *J. C.*

(VI) The sum payable must be certain.—The sum expressed to be payable by the instrument must be certain and not susceptible of

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contingent additions or subtractions. The following instruments would be invalid as promissory notes as not being for a sum certain within the meaning of S. 4 :—

(*a*) "I promise to pay *A* Rs. 100 and all other sums which may be due to him." [See illus. (*b*), S. 4.] *Smith* v. *Nightingale* (1818), 2 Stark 375; *Crawford* v. *Gurney* (1832), 9 Bing. 372.

(*b*) "I promise to pay *A* Rs. 100 first deducting thereout any interest or money which he may owe me." [See illus (*c*), S. 4.] *Barlow* v. *Broadhurst* (1826), 4 Moore P C. 471.

(*c*) "I promise to pay *A* the proceeds of a shipment of goods value of Rs. 2,000." *Jones* v. *Simpson* (1823), 2 B. & C. 318.

(*d*) "I promise to pay *A* Rs 1,000, and all fines according to rule." *Agrey* v. *Fecuwsides* (1838), 14 M. &. W. 168.

The sum payable under a promissory note is, however, certain within the meaning of this section although it is required to be paid :—

(i) with interest, or

(ii) at an indicated rate of exchange or according to the course of exchange, or

(iii) by instalments, with a provision that on default being made in payment of an instalment the balance unpaid shall become due. (See S. 5).

Where a promissory note expressed a promise to pay the sum mentioned therein "with interest at 10 per cent per annum with quarterly rests," it was held that the note was for a sum certain within sections 4 and 5 of the Act, and, therefore, a negotiable instrument. *Lakshminath* v. *Benares Bank Ltd.*, A.I.R. (1929), Pat. 136.

(VII) The Instrument must contain a promise to pay money and money only.—To operate as a valid promissory note the medium of payment must be in *money* and money only,—that is in legal tender. An agreement to do something in addition to or other than to pay money cannot be a promissory note. Thus an instrument containing a promise to pay money and paddy is not a promissory note. *Muttu Chetti* v. *Muttan Chetti*, 4 M. 296. Again a promise to pay "*X* in East India Bonds," or a promise "to deliver to *X* 100 tons of iron," or a promise "to pay Rs. 100 and to deliver up a wharf to the payee" is not a promissory note. *Bolton* v. *Richards* (1795), 6 T.R. 139; *Ex parte Mason* (1815), 2 Rose 225; *Martin* v. *Chantry* (1748), 2 Stra. 1271.

(VIII) The payee must be certain.—"To make a promissory note, there must be a payee ascertained by name or designation." Per Jervis, C. J., in *Cowie* v. *Stirling*, 6 E. & B. 327. The instru-

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ment must point out with certainty the party who is to receive the money. Thus, where a debtor made an entry of receipt of money in his creditor's book and stated that the money borrowed by him would be repaid on a certain date, without stating who was to be the payee, it was held that such an entry did not amount to a promissory note. *Emperor* v. *Kallu Mal* (1903), A.W.N. 174; *Lala Jethaji* v. *Bhagu Gopal*, 3 Bom. L.R. 699. An instrument made payable on a future date "to the members for the time being" of a firm has been held not to be a promissory note, as the members are not capable of being ascertained on the date on which the instrument was executed. *Yeo Eng. Pwa* v. *Firm of Chetty*, 5 L.B.R. 102. The person to whom payment is to be made may be a "certain person" within the meaning of this section although he is misnamed or designated by description only (See S. 5). Thus a promissory note payable to "the manager of a bank" is payable to a "certain person" within the meaning of Section 4. *Mahant Damodar Das* v. *Benares Bank Ltd.*, 5 Pat. L.J. 536. Extrinsic evidence is admissible to indentify the payee when he is misnamed or when he is designated by description only, but not to explain an uncertainty patent on the note. *Willis* v. *Barrett* (1816), 2 Stark 29. The expression "certain person" under sections 4 and 5 of the Act means a person capable of being ascertained on the date on which the note is made or the bill is accepted.

A promissory note cannot be made payable to the maker himself, such a note is a nullity, the reason being that the same person is both the promisor and the promisee. Thus a note in the form "I promise to pay myself" is not a promissory note. Though a note payable to the drawer himself or his order is a nullity, it is valid if it is endorsed by the maker, because then it becomes payable to bearer, if endorsed in blank, or to the indorsee or order, if specially endorsed. *Browne* v. *De Winton* (1848), 17 L.T.C.P. 281; *Gay* v. *Landal* (1848), 17 L.T.C.P. 286. See Bills of Exchange Act, S.83(2). A promissory note drawn by several persons and made payable to "one and each of our order" is valid if it is endorsed by one of the makers, and on such a note an action can lie against the endorser. *Absolon* v. *Marks* (1847), 11 Q.B. 19.

Consideration, place, date, etc.—Though it is usual to mention in a note that it is made for "value received," such a statement is not an essential of the note and its omission will not render the instrument invalid. *Hatch* v. *Trayes*, 11 A. & E. 702. The fact that sometimes the note recites the transaction out of which the obligation under it arises does not affect the character of the instrument.

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It is also usual and proper to state in a note the place where it is made. But its omission does not make the instrument invalid. Again a promissory note does not become invalid because it contains a promise to pay at a certain place. Such an instrument answers the definition of a promissory note as defined by the Act. *Deva Ratna* v. *Fakir Adam*, 4 Bom. L.R. 428.

Though it is usual to state the date on which a note is made, date is not an essential requisite of a note, and want of date does not make it invalid. An undated instrument is deemed to have been dated on the date of its delivery. *Giles* v. *Browne* (1817), 6 M. & W. 573. It is, however, open to the holder of an instrument to show by parol evidence that the instrument was intended to operate from future uncertain period and not from the date of its delivery. *Davis* v. *Jones* (1856), 25 L.J.C.P. 91. An instrument is not invalid because it is ante-dated or post-dated or that it bears date on a Sunday. See Bills of Ex. Act, S. 13 (2). *Pasmore* v. *North* (1811), 13 East 517 ; *Usher* v. *Dancey* (1814), 4 Camp. 97.

Under Section 118 (*b*) of the Act, until the contrary is proved it will be presumed that every negotiable instrument bearing a date was made or drawn on that day.

In a Bombay case the Privy Council held that the debentures of the Bombay Improvement Trust were promissory notes. The Plaintiff entrusted forty-one debentures issued by the Bombay Improvement Trust and one debenture issued by the Bombay Municipality to Defendant No. 1 for collection of interest. Defendant No. 1 forged endorsements in his own favour on those debentures, endorsed them to the Alliance Bank, and handed them over to the bank as security for debts owed by him. Subsequently, the Alliance Bank renewed the debentures into new ones and of different denominations, in their own name. Defendant No. 1 then took a fresh loan from the Mercantile Bank of India to pay off the Alliance Bank, and on his instruction the Alliance Bank endorsed the debentures in favour of, and delivered them over to, the Mercantile Bank of India who retained them as security for the loan. The plaintiff came to know of Defendant No. 1's fraud, and sued to recover the debentures from the Mercantile Bank of India. *Held,* dismissing the suit that the so-called debentures were promissory notes as defined by section 4 of the Negotiable Instruments Act, and were, therefore, negotiable instruments under section 13 of the Act. *Mascarenhas* v. *The Mercantile Bank of India,* 34 B.L.R. 1.

For Specimens of promissory notes, see Appendix II.

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"Bill of exchange."

5. A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

A promise or order to pay is not "conditional," within the meaning of this section and Section 4, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain," within the meaning of this section and Section 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person," within the meaning of this section and Section 4, although he is misnamed or designated by description only.

NOTES

Bill of Exchange, Requisites.—A bill of exchange is sometimes called a "draft." On analysis of the definition, the following points may be noticed as essential requisites of a bill of exchange :—

(I) The bill of exchange must be in writing.—(As to "Writing" see Notes to S. 4). A bill of exchange may be written in any language, and any form of words may be used, provided the requirements of this section are complied with.

(II) The bill of exchange must contain an order to pay.—When a bill of exchange is drawn the presumption is that there are funds in the hands of the person to whom the order is given, which are payable in any case to the person giving the order. It is of the essence of a bill of exchange that the drawer *orders* the drawee to pay money to the payee. As a bill of exchange is an "order" it is necessary that it must in its terms be *imperative* and not precative. To frame a bill, therefore, in such a manner that it might be treated as a mere request would cause inconvenience and uncertainty. But the insertion of a term of politeness or courteous expression like

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" please pay " affixed to the " order " will not invalidate an instrument purporting to be a bill of exchange. Thus an instrument running " Mr. *AB* will much oblige Mr. *CD* by paying to the order of *P* " was held good as a bill. *Ruff* v. *Webb*, 1 Esp. 129. But excessive terms of politeness may lead to the construction that the communication contained in the bill was not an order. Thus, where a document was drawn in this form: *Mr. Little, please to let the bearer have seven pounds and place it to my account, and you will oblige.*" It was held not to be a bill, because the paper did not purport to be a demand made by a party having a right to call on the other to pay. The fair meaning to put on such an instrument was, " You will oblige me by doing it." *Little* v. *Slackford* (1828), M. & W. 171. The direction to the drawee, however, need not be expressed by the word " pay " but any words conveying the idea of " pay ", e.g., " credit in cash " will be sufficient. *Eddison Collingridge* (1850), 19 L.J.C.P. 268. A mere request to pay an account will not amount to an order. *Morris* v. *Soloman* (1840), 2 Moo. & Role 266. Where in pursuance of an agreement to lend moneys, *A* gave his creditors certain " *Chits* " for certain sums. These " *Chits* " were addressed to *B* and required him to pay the amounts mentioned therein. *B* did so and sued *A* for the amount so advanced. *Held* that the " *Chits* " were neither bills of exchange, nor cheques, the agreements not making *B* a banker. *Ratulal Rangildas* v. *Vrijbhukhan Parabhuram*, 17 Bom. 684.

(III) The order contained in the bill should be unconditional.— (As to " Unconditional " see Notes to S. 4). As it is of the essence of a bill that it should be payable at all events, and this requisite must appear on its face with reasonable certainty. A bill of exchange cannot be drawn so as to be payable conditionally. The drawer's order to the drawee must be unconditional and should not make the payment of the bill dependent on a contingency. Where an instrument is expressed to be payable on a contingency, it does not cease to be invalid by the happening of the event before the expiry of the period fixed for the performance of the obligation, for, the instrument must be valid *ab initio*, and carry its validity on its face. *Coleham* v. *Cooke* (1742), Willes 393. A conditional bill of exchange is invalid. The following are invalid bills of exchange :—

A bill containing an order to pay :—

(*a*) " ninety days after sight or when realized." *Alexander* v. *Thomas* (1851), 16 Q.B. 333 ;

(*b*) " sixty days after the arrival of the ship ' Victory ' at Bombay." *Palmer* v. *Pratt* (1824), 2 Bing. 185 ;

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(*c*) " when I am in prosperous circumstances." *Ex-parte Tootell* (1798), 4 Ves. Jr. 372;

(*d*) " on condition that a receipt form at the foot hereof is duly signed." *Bavins & Sims* v. *L. & S. W. Bank Ltd.* (1900), 1 Q.B. 270; *Capital and Counties Bank* v. *Gordon* (1903), A.C. 240, 252;

(*e*) " when I marry ." *Pearson* v. *Garett* (1693), 4 Mod. 242;

(*f*) " a debt that may come into existence at a future date." *Banbury* v. *Lesset* (1744), 2 Stra. 1211;

(*g*) " Rs. 10,000 on the sale of 3 bales of cotton." *Hill* v. *Halford* (1801), 2 B. & P. 413.

Bills payable out of a particular Fund.—On the same principle, a bill or note expressed to be payable out of a particular fund is conditional and invalid, because it is uncertain whether the fund will be in existence or prove sufficient when the bill becomes payable. Thus a bill containing an order to pay, " out of money due from *A* as soon as you receive it " or " out of money remaining in your hands belonging to *X* Company," is invalid. *Jenny* v. *Herle* (1723), 2 Ld. Raym 1361, *Dankes* v. *Deloraine* (1770), 3 Wils. 207. But an unqualified order to pay, coupled with an indication of a particular fund out of which the drawee is to reimburse himself, or of a particular account to be debited with the amount, is not conditional and therefore valid. Thus a bill containing an order to pay, " against cotton per *Victory* " or " being a portion of a value as under deposited in security for the payment hereof " or " against credit No. 20, and place it to account as advised per *X* Co." constitutes a valid bill. *Griffin* v. *Weatherby* (1868), L.R. 3 Q.B. 753; *Haussouillier* v. *Hartsinek* (1798), 7 T.R. 733; *Macleod* v. *Snee* (1726), 2 Ld. Raym 1481; *Guaranty Trust Co. of New York* v. *Hannay & Co.* (1918), 1 K.B. 43, 45; (1918), 2 K.B. 623; *Re Bayse* (1886), 33 Ch. D. 612, 621.

(IV) The bill of exchange must be signed by the Drawer.—(As to " Signature ", see Notes to S. 4). A bill is not valid unless it is signed by the drawer and if the drawer has not signed it, no action could be maintained against the acceptor or any other party who has affixed his signature thereto. Thus a bill drawn by *A* on *B* is without *A*'s signature and is accepted by *B*, and is negotiated to *C* for value. The instrument is not a bill of exchange. *McCall* v. *Taylor*, 34 L.J.C.P. 365; *Stoessiger* v. *S. E. Rly. Co.* (1854), 3 E. & B. 549; *Goldmid* v. *Hampton* (1858), 5 C.B.N.S. 94. But the signature may be added at any time after the issue of the bill (See S. 20); but until it is so added the instrument remains inchoate and ineffectual.

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Three parties are necessary to a bill of exchange :—

(1) the " drawer," the person who is the maker of the bill ;

(2) the " drawee," the person who is directed to pay the bill, and

(3) the " payee," the person to whom or to whose order the amount of the instrument is payable.

It is, however, not necessary that three separate persons should answer to the description of " drawer," " drawee," and " payee." One person may fill any two of these positions. Thus, one person may become drawer and payee ; likewise, one person may become drawee and payee. *Holdsworth* v. *Hunter* (1880), 10 B. & C. 362. What is required by the section is that three parties " drawer," " drawee," and " payee " must be pointed out in the bill with reasonable certainty. A bill can be drawn by more than one drawer, in which case they are jointly liable, but a bill cannot be drawn with a liability in the alternative.

(V) The drawee must be certain.—The next requisite is that the instrument shall be addressed to a person ordering him to pay the amount of the bill. The person to whom the bill is addressed is called the " drawee," and he must be named or otherwise indicated in the bill with reasonable certainty. In the interest of all parties it seems absolutely indispensable that the drawee must be indicated in the bill with reasonable certainty, so that the payee may know the person to whom he should present the instrument for acceptance and payment. Likewise the person who accepts and pays a bill on account of the drawer should know with reasonable certainty whether it is addressed to him or not. Thus where an instrument is drawn in the form of a bill, and is addressed to no one, it is not a valid bill, even though a person writes his acceptance on it. But such an instrument may be treated as a promise to pay, the acceptor being liable as a maker of a note. *Fielder* v. *Marshall*, 30 L.J.C.P. 158 ; *Peto* v. *Reynolds* (1854), 9 Ex. 410, 11 Ex. 418. But where an instrument is drawn in the form of a bill, not containing the name of the drawee, but is expressed to be payable at a certain place, e.g., " Payable at No. 10, Lombard Street " and is accepted by *A*, a person residing at that place, it is a valid bill and the acceptor *A* is liable. It is clear that before acceptance there was no drawee's name, but as soon as *A* puts his name as acceptor the words " payable at No. 10, Lombard Street " became definite and certain, and *A* acknowledged by this acceptance that he was the person to whom the bill was directed. *Gray* v. *Milner* (1819), 8 Taunt 739. A bill cannot be addressed to two or more drawees in the alternative, because it would create difficulties as to recourse if the bill were dishonoured.

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(VI) The sum payable must be certain.—(As to "Sum certain", see Notes to S. 4).

(VII) The instrument must contain an order to pay money and money only.—(As to "Money", see Notes to S. 4).

(VIII) The payee must be certain.—(As to "payee", see Notes to S. 4). A bill must state with certainty the person to whom payment is to be made. "A bill of exchange ought to specify to whom the same is payable, for in no other way can the drawee, if he accepts it, know to whom he may properly pay it, so as to discharge himself from all further liability" (*Story on Bills* § 14). Where a bill is payable to bearer the payee is indicated with certainty. Bills are rarely drawn payable to bearer, but cheques are commonly so drawn. Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty. A bill of exchange may be made payable to two or more payees jointly or it may be made payable in the alternative to one of two, or one or some of several payees. (See S. 13). A bill may be drawn payable to the order of the drawee, but such a bill cannot be enforced until the drawee has indorsed it away. *Holdsworth* v. *Hunter*, 10 B. & C. 149. A bill may be drawn payable to bearer. But a bill cannot be drawn payable to bearer on demand. (Indian Paper Currency Act, S. 26).

Where in a bill the drawee or payee is misnamed or misdescribed, extrinsic evidence is admissible to identify him. *Willis* v. *Barret* (1816), 2 Stark 29; *Jacobs* v. *Benson* (1855), 20 Maine. R. 132. (As to "consideration," "place," "date," etc. See notes to S. 4).

Bills of exchange and promissory notes compared.—For most purposes the rules that apply to bills of exchange are in general applicable to promissory notes, but there are certain points of difference between them which may be enumerated :--

(1) The liability of the maker of a promissory note is primary and absolute, but the liability of the drawer of a bill of exchange is secondary and conditional. (Ss. 30 and 32).

(2) The maker of a promissory note corresponds in general to the acceptor of a bill of exchange. (S. 32). Hence, unless a promissory note is expressed to be payable at a certain place, presentment for payment is not necessary to make him liable, and notice of dishonour is not required. (Ss. 37, 64, 68, 69).

(3) The position of the maker of a note, however, differs from the acceptor of a bill in this respect that a note cannot be made

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conditionally, while a bill may be accepted conditionally. The reason of this distinction is due to the fact that the acceptor of a bill is not the originator of the bill, his contract is supplementary being superimposed on that of the drawer, while the maker of a note originates the instrument.

(4) A promissory note indorsed by the payee corresponds with an accepted bill payable to drawer's order, the payee of the promissory note having the same rights and responsibilities as the drawer of an accepted bill.

(5) The maker of a promissory note stands in immediate relation with the payee, whereas the drawer of an accepted bill of exchange stands in immediate relation with the acceptor and not the payee. (S. 44, Explanation).

(6) The following provisions relating to bills do not apply to notes, namely provisions relating to :—(*a*) Presentment for acceptance, (*b*) Acceptance, (*c*) Acceptance *supra protest*, and (*d*) Bills in sets.

(7) Foreign bills must be protested for dishonour when such protest is required by the law of the place where they are drawn. (S. 104).

For Specimens of bills of exchange, see Appendix II.

"Cheque"

6. A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

NOTES

Cheques.—A cheque is a bill of exchange drawn on a specified banker and is payable only on demand. As a cheque is a species of bill of exchange, the definition implies that it must be drawn in accordance with the requirements of section 5 of the Act. Accordingly a cheque must be signed by the drawer, and must contain an unconditional order on a specified banker for payment of a certain sum of money to or to the order of a specified person or to the bearer of the instrument. All cheques are bills of exchange, but all bills of exchange are not cheques. The definition of a cheque in section 6 is wide enough to include a demand draft payable to bearer drawn by one bank on another or by a branch bank upon its head office. But such drafts have been held not to be cheques. *Counties Bank* v. *Gordon* (1903), A.C. 240, 250. Besides such drafts are prohibited by section 26 of the Paper Currency Act.

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Though cheques are bills of exchange, they do not require acceptance, and drawing of a cheque does not create in favour of the payee an assignment of the money in the hands of the banker so as to entitle the payee to enforce by an action payment of the cheque as against the banker. Though a cheque requires no acceptance, in some places there is a custom among bankers to mark cheques as good for purposes of clearance. Such a marking is equivalent to an acceptance, and binds the banker to pay the cheque so marked in the hands of the payee, or any other holder from him. *Robson* v. *Bennet* (1810), 2 Taunt 388 ; *Goodwin* v. *Roberts* (1875), L.R. 10 Ex. 351, 352. In the absence of any such custom it has been held that where a cheque is marked or certified by being initialled by the bank on which it is drawn, the marking operates as a representation that the bank, at the time of certifying, has funds of the drawer in its hands sufficient to meet the payment of the cheque and thus adds to the credit of the drawer the credit of the banker on whom it is drawn. *Gaden* v. *Newfoundland Savings Bank* (1899), A.C. 281 ; *Imperial Bank of Canada* v. *Bank of Hamilton* (1903), A.C. 49. A cheque is not invalid by reason that it is antidated or post-dated. Such a cheque is still payable on presentment after the date. *Whistler* v. *Forester* (1863), 32 L.J.C.P. 161. A cheque may be dated on a Sunday.

Cheques and bills of exchange compared.—Cheques and bills of exchange are in many respects governed by the same rules and principles as they have many points in common. *Mc Lean* v. *Clydesdale Banking Co.* 9 A.C. 95, 107 ; *Sutters* v. *Briggs* (1922), 1 A.C. 1, 12. As a general rule, the provisions applicable to bills of exchange payable on demand apply to cheques. Still there are a few points of difference between them which require special mention :—

(1) A bill of exchange must be accepted before the acceptor can be made liable upon it. A cheque requires no acceptance and is intended for immediate payment. While it cannot be said that a cheque can never be accepted, it is only done in very unusual and special circumstances, and would require strong and unmistakable words. Thus a certification of a cheque did not constitute an acceptance within the meaning of the Indian Negotiable Instruments Act, 1881. *Bank of Baroda* v. *Punjab National Bank Ltd.*, 71 Ind. App. 124.

(2) A bill of exchange is entitled to ~~two~~ three days of grace. A cheque is payable immediately on demand without any days of grace.

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(3) The drawee of a cheque is always a banker, whereas in case of a bill of exchange the drawee may be any one including a banker.

(4) A bill must be duly presented for payment or else the drawer will be discharged. The drawer of a cheque is not discharged by delay of the holder in presenting it for payment, unless, through the delay, the position of the drawer has been injured by the failure of the bank, when he had sufficient funds deposited with the bank to meet the amount of the cheque.

(5) When a bill of exchange is dishonoured by non-payment, notice of dishonour is necessary. When a cheque is not met notice of dishonour is not necessary. Want of assets in the hands of the banker is sufficient notice.

The differences between a bill of exchange and a cheque are pointed out by Parke, C. B. in *Ramchurn Mullick* v. *Lachmeechand* (1884), 9 Moore. P.C. 46, 54, 69 thus : " A banker's cheque . . . is a peculiar sort of instrument, in many respects resembling a Bill of Exchange, but in some entirely different. A cheque does not require acceptance ; in the ordinary course it is never accepted ; it is not intended for circulation, it is given for immediate payment , it is not entitled to days of grace ; and though it is, strictly speaking, an order upon a debtor by a creditor to pay to a third person the whole or part of a debt, yet, in the ordinary understanding of persons, it is not so considered. It is more like an appropriation of what is treated as ready money in the hands of the banker, and in giving the order to appropriate it to a creditor, the person giving the cheque must be considered as the person primarily liable to pay, who orders his debt to be paid at a particular place, and as being much in the same position as the maker of a promissory note, or the acceptor of a Bill of Exchange, payable at a particular place and not elsewhere, who has no right to insist on immediate presentment at that place."

For Specimens of Cheques, see Appendix II.

The Indian Paper Currency Act.—The Negotiable Instruments Act did not affect the provisions of the Indian Paper Currency Act. Sections 25 and 26 of the Paper Currency Act X of 1923, corresponding to sections 24 and 25 of the Paper Currency Act XV of 1882 ran as follows :—

Section 25 :—" No person in British India shall draw, accept, make or issue any bill of exchange, hundi or promissory note, or engagement for the payment of money payable to bearer on demand

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or borrow, owe or take up any sum or sums of money on his bills, hundies or notes payable to bearer on demand, of any such person :

Provided that cheques or drafts, to bearer on demand or otherwise, may be drawn on bankers, shroffs or agents by their customers or constituents, in respect of deposits of money in the hands of those bankers, shroffs or agents and held by them at the credit and disposal of the persons drawing such cheques or drafts ".

Section 26 :—" Any person contravening the provisions of section 25, shall, on conviction . . . be punishable with a fine equal to the amount of the bill, hundi, note or engagement in respect whereof the offence is committed."

The object of the Paper Currency Act was to prevent banks and private persons from infringing the Government monopoly of issuing the paper currency of India. *Jetha Perkha* v. *Ramchandra Vithoba*, 16 Bom. 689, 700. This monopoly has now been transferred to the Reserve Bank of India and the Governor-General-in-Council in certain cases. The Paper Currency Act has been repealed by the Reserve Bank of India Act (Act II of 1934).

CORRIGENDA

India Act XXIII of 1946

Whereas it is expedient further to amend the Reserve Bank of India Act 1934 (II of 1934) for the purposes hereinafter appearing :

It is hereby enacted as follows :—

1. *Short title.*—This Act may be called the Reserve Bank of India (Amendment) Act 1946.

2 *Amendment of Section 31, Act II 1934.*—Section 31 of the Reserve Bank of India Act 1934, shall be renumbered as sub-section (1) of that section and to the section so renumbered the following sub-section shall be added, namely :—

" (2) Notwithstanding any thing contained in the Negotiable Instruments Act 1881, (XXVI of 1881) no person in British India other than the Bank or, as expressly authorised by the Act, the Central Government shall make or issue any promissory note expressed to be payable to the bearer of the instrument."

3 *Repeal of Ord. XVII of 1946.*—The Bearer Promissory Notes (Prohibition of Issue) Ordinance XVII of 1946, is hereby repealed.

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(2) No prosecution under this Act shall be instituted except on complaint made by the Bank.

The word "*dhani*" means owner, and in the language of the Bombay Presidency it is not equivalent to "bearer". Accordingly, a document making a sum of money payable to "dhani" on demand is not negotiable by mere delivery as an instrument payable to bearer and did not come within the penal provisions of the Paper Currency Act. *Jetha Parkha* v. *Vithoba*, 16 Bom. 689, 698.

'Drawer.' 'Drawee.'

7. The maker of a bill of exchange or cheque is called the 'drawer'; the person thereby directed to pay is called the 'drawee.'

"Drawee in case of need."

When in the bill or any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need."

"Acceptor."

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor."

"Acceptor for honour."

When a bill of exchange has been noted or protested for non-acceptance or for better security, and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called the "acceptor for honour."

"Payee"

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee."

NOTES

"Drawee in case of need".—Besides the parties necessary to a bill of exchange another person may be introduced at the option of the drawer, called the "drawee in case of need," (in English law he is spoken of as a "referee in case of need," or amongst merchants merely as the "case of need"). The drawer in that case inserts on the face of the bill the name of the person to whom resort may be had "in case of need," i.e. in the event of the bill being dishonoured by non-acceptance or non-payment. For specimen of a bill with a drawee in case of need, see Appendix II.

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What is an acceptance ?—The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The essentials of a valid acceptance are that it must be written across the face of the bill, and must be signed by the drawee. Any appropriate words may be used by the drawee to convey his assent to the drawer's order, but his bare signature, without additional words, is sufficient. An oral acceptance however is not sufficient in law. The usual form in which the drawee accepts the instrument is by writing the word " accepted " across the face of the bill and signing his name underneath. The mere signature of the drawee without the addition of the words " accepted " is a valid acceptance. For specimen of an acceptance, see Appendix II.

But where the drawee writes on the bill the words " accepted " but does not sign it, it is not an acceptance. It is not necessary that the acceptance should be on the face of the bill, and an acceptance written on the back of the bill, has been held to be sufficient in law. *Young* v. *Glover* (1857), 33 Jur. N.S. 637. But the essential thing is that it must be written *on* the bill, otherwise it does not create any liability as acceptor on the part of the person signing it. The plaintiff sued to recover on certain bills drawn on the defendant and endorsed over to the plaintiff, the defendant failed to pay them. In one of the bills, the acceptance by the defendant was signed upon the original bill, but in others it was merely on copies of the bills. *Held* that whereas S. 7 of the Act lays down that the acceptance shall be signed either upon the bill or upon one of its parts, the defendant's assent was signed only upon copies of the bills ; and thus a material requirement of the law was omitted with the result that there was no valid acceptance. *Ardeshir* v. *Khushaldas*, 10 Bom. L.R. 268. The drawee of a bill does not render himself liable on the bill until acceptance, even though he may be in possession of the funds of the drawer. Even admission of funds is not sufficient to bind him. If the drawee of a bill refuses to accept it, he cannot be sued on the bill by the payee or any holder. *Goodwin* v. *Roberts* (1875), L.R. 10 Ex. 351. The drawee of a bill does not make himself liable on the bill until he puts his signature to it and thereby signifies his assent to the order of the drawer.

An instrument purporting to be a promissory note, in which there is no mention of a drawee, may become a bill of exchange if acceptance is endorsed thereon by a third party. A person who thus endorses an acceptance thereby admits himself to be a drawee and becomes liable under it, even though he is not named as a drawee, provided acceptance by him is not inconsistent with the

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address on the bill of exchange. The acceptor having signified his acceptance is estopped from contending that he is not the drawee. *Jogeshchandra Dhar* v. *Mahammud Ibrahim*, 57 Cal. 695 ; *Lloyd* v. *Oliver*, 18 Q.B. 417.

Though a drawer cannot make his order to pay the bill conditional, an acceptance may be either absolute or qualified (See S. 86). An acceptance is invalid if it does not express that the drawee will perform his promise by any other means than the payment of money. Thus a bill is drawn by *A* on *B* for Rs. 5,000. *B* accepts it "payable in bills" or "payable in goods". This is not a valid acceptance. *Russell* v. *Phillips* (1850), 14 D.B. 891.

An acceptance is not complete and binding upon the drawee until the drawee has *delivered over* the accepted bill to the holder, or has given notice of such acceptance to the holder, or some person on his behalf. Thus, where a drawee, having once written his acceptance with the intention of accepting a bill, afterwards changes his mind, and before it is communicated to the holder or the bill is delivered back to him, obliterates his acceptance, it was held that he was not bound as acceptor. *Cox* v. *Troy* (1822), 5 B. & Ald. 474 ; *Chapman* v. *Cottrell* (1865), 24 L.T. Ex. 186.

Payee.—The term "payee" does not include the term "indorsee," neither does it include the term "indorser". From sections 9, 15 and 16 *infra* it seems clear that the term "payee" is used in a restricted sense, i.e. the person mentioned by the drawer to whom or to whose order the money is by the instrument directed to be paid.

"Holder."

8. The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

Where a note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

NOTES

Holder.—Before a person can claim to be the "holder" of a negotiable instrument it is necessary that :—

(1) he should be entitled in his own name to the possession of the instrument, and

(2) he should have the right to receive or recover the amount due thereon from the parties thereto.

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The words "entitled in his own name" seem to suggest that the term "holder" means only a *de jure* holder" and does not apply to a "*de facto* holder". A person may be entitled to the possession of an instrument, although as a matter of fact he is not in actual possession. Possession of the instrument is not necessary to constitute a person a holder. It is not essential that the title of the holder should be the full title of an owner. All that is required is that he must be "entitled in his own name to the possession thereof"; which signifies that a person can claim to be entitled in his own right to the benefit of the instrument although the possessor of the instrument is a mere agent in whose name the indorsement is made. Accordingly, when a negotiable instrument was executed in favour of "*A*, as the agent of *B*" and was endorsed by *A*, *simpliciter* (that is, without describing himself as the agent of *B*) to *C*, it was held that the indorsement could not, in the absence of any evidence to show that *A* was intended to be the beneficial owner of the note, convey, in this country, any title to *C* so as to enable *C* to sue the person or persons liable on the instrument. *Veeraiyam Chettiar* v. *Ponnusami Chettiar*, 36 Mad. 362. The term holder, does not include a beneficial owner. The holder of a promissory note is essentially the person who is "entitled in his own name" to the possession thereof. The term holder, therefore, does not include a person who, though in possession of the instrument, has not the right to recover the amount due thereon from the parties thereto. *Lachmi Chand* v. *Madanlal Khemka*, A.I.R. (34), 1947, Allahabad 52. It is a general rule that no person can sue on a negotiable instrument unless his name appears thereon as payee or indorsee or unless the instrument is made payable to bearer and he is the possessor thereof. Thus, if a plaintiff suing on a negotiable instrument can show that he is the bearer, or the payee or indorsee named in the instrument, then it is immaterial that he is not the true owner and that some one else, for whom the plaintiff is a mere agent, is entitled to the benefit of the instrument. Accordingly when a plaintiff is a benamidar, or a trustee, or a guardian, and he takes a negotiable instrument in his own name, he is the person entitled in his own name to the possession of the instrument, and as such, he is the person entitled to sue upon it. *Bojianna* v. *Venkatramayya*, 21 Mad. 30; *Sarat Chunder Dutt* v. *Kedar Nath Dass*, 2 C.W.N. 286, 288. In a suit on a negotiable instrument by the payee named therein or the indorsee, it is not open to the defendant to plead that such payee or indorsee is a mere benamidar. *Subba Narayana Vathiyar* v. *Ramaswami Aiyar*, 30 Mad. 88. A benamidar or trustee who takes a note in his own name is the person entitled in his own name to

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the possession thereof and not the *cestui que trust* or person for whom he holds the note. He is, therefore, the proper person to sue upon it. *Ramanuja Ayyangar* v. *Sadagopa Ayyangar*, 28 Mad. 205. In a recent Calcutta case it was held that the holder of a promissory note alone is entitled to maintain a suit on the note for the recovery of the money due thereon. A true owner, who is not a holder, cannot maintain a suit on a promissory note, even though the holder is admittedly his *benamidar* and is made a party to the suit. The property in a promissory note including the right to recover the amount due thereon is vested by statute in the holder of the note. *Harkishore Barna* v. *Gura Mia Chaudhari*, 58 Cal. 752. A true owner in whose favour there is no indorsement by the holder of the note cannot maintain a suit on it for the recovery of money due threon. *Virappa Nanvi* v. *Katti*, 36 B.L.R. 807. The word "entitled" suggests that the title of the holder, whatever it is, must have been acquired in a proper manner. Thus, a person who takes a negotiable instrument under a forged indorsement, and a thief, and a finder of such an instrument is not a "holder" under this section.

Co-parceners governed by the Mitakshara law and carrying on a joint family business could be described as the holder of a promissory note, if it was made in its collective or business name and therefore in its own name within the meaning of section 8 of the Indian Negotiable Instruments Act, 1881. *Damel* v. *Manmohandas Lallubhai*, 42, B.L.R. 248.

The right of a holder of a promissory note to sue upon it is personal to him. No other person can be said to have an interest in it merely by birth or by being a member of the co-parcenary. Although the debt itself may be co-parcenary property the promissory note is not. It does not devolve by survivorship but succession. *Shantaram* v. *Shantaram*, 40 B.L.R., p. 964.

"Holder in due course."

9. "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque, if payable to bearer,

or the payee or indorsee thereof, if payable to order,

before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

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NOTES

Holder in due course.—This section has been amended by the Negotiable Instruments (Amendment) Act (VIII of 1919). Prior to the amendment the second paragraph of section 9 ran as follows :—

"or the payee or indorsee thereof, if payable to, or to the order of, a payee."

By S. 2 of the Negotiable Instruments Act, 1919, the words "*payable to order*" have been substituted for the words "*payable to or to the order of a payee.*"

Before a person can claim to be a "holder in due course," he must show :—

(1) That for a *consideration* he became the possessor of a negotiable instrument when the instrument is payable to bearer, or the payee or indorsee of the instrument when the instrument is payable to order.

(2) That he became the holder of the instrument *before the amount mentioned in it became payable.*

(3) That he became the holder of the instrument *without having sufficient cause to believe that any defect existed* in the title of the person from whom he derived his title.

(I) Consideration.—It is essential that a person who claims to be a holder in due course must show that he acquired the instrument for a consideration, which must be valuable and lawful. Valuable consideration consists either in some right, profit, or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility given, or suffered or undertaken by the other. *Currie* v. *Misa* (1875), L.R. 10 Ex. 153, 162. [See Indian Contract Act, Sec. 2 (d)]. It is also necessary that the consideration should be lawful, and it should not be forbidden by law, or fraudulent or immoral or opposed to public policy and should not involve any injury to the person or property of another. (See Indian Contract Act, S. 23). Thus, a debt due on a wagering contract is not lawful consideration, and a person who acquires a bill or note in consideration of such a debt is not a holder in due course. *Trikam Damodar* v. *Lala Amirchand,* 8 B.H.C.R. (A.C.) 131.

Under the Indian law, an agreement, the consideration or object of which is illegal, immoral or against public policy, is not a contract; and money due or paid under such on agreement cannot be recovered by suit. Moneys due on a promissory note executed in considera-

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tion of the balance of the security deposit for the lease of a house taken for immoral purposes cannot be recovered by suit. *Kalikumari Baishnabi* v. *Manomohinee Baishnabi*, 43 Cal. 445. Consideration for a note or bill, however, can operate as such only once, and when it has so operated for once it is spent, and it cannot operate for another and subsequent promise. A single consideration cannot support an indefinite series of subsequent and independent promises or contracts. *Ramaswami Pandia* v. *Anthappa Chettiar*, 16 M.L.J. 422.

Consideration for a negotiable instrument, however, may appear in various ways. Thus, a discounter of a bill is a holder for value and if he satisfies the other requirements of the section he will be a holder in due course. *Exparte Schofield* (1879), 2 Ch.D. 337 C.A. Again if a bill is discounted with a bank and is indorsed and delivered over to it, the bank becomes an indorsee for value. *Babu Goridut Bogla* v. *Ebrahim Doopley*, 14 Bur. L.R. 25. Where the holder of a bill or note has a lien upon it, he is a holder for consideration to the extent of the advance for which he has a lien. *Collins* v. *Martin* (1797), 1 B. & P. 648 ; *Mutha Krishna Iyer* v. *Veerarghava Iyer*, 38 Mad. 297. (As to 'consideration' on negotiable instruments, see Ss. 43, 44, 45.) Under the Indian Contract Act, S. 2(*d*), past consideration is a good consideration and will support a negotiable instrument. An antecedent debt or liability is sufficient to constitute a valuable consideration for a negotiable instrument. *Poirier* v. *Morris* (1853), 2 E. & D. 89. Where a bill of exchange payable after date is transferred before maturity in discharge of a pre-existing debt, the creditor becomes a holder in due course of the bill. *Daulatram* v. *Nagindas*, 15 Bom. L.R. 333. Consideration being necessary to support the title of a holder in due course it follows that a donee of a negotiable instrument is not a holder in due course and he cannot maintain an action against the donor on the instrument. *Milnes* v. *Dawson* (1850), 5 Ex. 948 ; *Holliday* v. *Atkinson* (1826), 5 B. & C. 501. Because, if his donor is not a holder in due course, he merely succeeds to the rights of his transferor ; but if his donor is a holder in due course, then by virtue of the rule contained in section 53 (viz., that a holder without value of a negotiable instrument who derives his title through a holder in due course has the rights thereon of a holder in due course), the donee *ipso facto* acquires all the rights of a holder in due course.

The plaintiff sued as an endorsee of a hundi drawn by defendant in favour of *M*. The Lower Court dismissed the suit holding that there had been no consideration as between the defendant and *M*. The plaintiff having applied to the High Court under its extraordi-

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nary jurisdiction. *Held,* that the plaintiff's suit as endorsee from *M* was not necessarily barred by the fact that there had been no consideration as between defendant and *M*. An endorsee from the payee of a hundi must be presumed, until the contrary is proved, to have been a holder in due course, that is to say, a holder for consideration from the payee within the meaning of S. 9 by reason of S. 118(*g*) of the Negotiable Instruments Act. He is, unless the contrary is proved, unaffected by the failure of consideration as between the drawer and the payee. *Sakharam* v. *Gulabchand,* 16 Bom. L.R. 743.

Though valuable consideration is necessary for a bill or note, the Court will not go into the question of the adequacy of such consideration. But where the *bona fides* of the transaction is impeached, the extent of the consideration given is a factor which the Court will consider in determining the question of *bona fides*. *Jones* v. *Gorden* (1877), 2 A.C. 616, 631.

It is further necessary that for a consideration, he, the holder, became (*a*) the possessor of the instrument if it is payable to bearer, or (*b*) the payee or indorsee of the instrument if it is payable to order, and that in the latter case his title has been completed by indorsement and delivery of the instrument to him, for no contract on a negotiable instrument is complete without delivery. *Chapman* v. *Cottrell* (1865), 34 L.J. Ex. 186 ; *Smith* v. *Miendry* (1860), 29 L.J. Q.B. 172.

(II) Before the amount became payable.—The second essential is as to the *time* when the negotiable instrument is acquired by the person who claims to be a holder in due course. The section says that the holder must have become the possessor of the instrument *before the amount mentioned in it became payable*. Therefore, a person who takes a bill or note on the day on which it becomes payable cannot claim the rights of a holder in due course, because he takes it *after* it becomes payable, as the bill or note can be discharged by payment at any time on that day.

A maker of a promissory note on demand left the promissory note in the hands of the payee after making payment thereon. No demand had been made on the promissory note. After receipt of such payment the payee indorsed the promissory note to another who had no knowledge of the fact of payment. In a suit by the indorsee against the payee and the maker, it was held that under sections 9, 22 and 60 of the Negotiable Instruments Act, the indorsee was entitled to recover the moneys both from the payee and the maker. *Gopalan* v. *Lakshmi Narasamma* (1940), Mad. 382.

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A person who takes a negotiable instrument after maturity cannot be a holder in due course, and the rights of such a holder are only those of his immediate transferor. (See S. 59.)

(III) Without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title :—

English Law.—Under English Law the only question to consider is whether the holder took the instrument in *good faith*, and once it is proved that he took the instrument in good faith, he is entitled to all the rights of a holder in due course notwithstanding that he was careless, that he made no enquiry, and that he was informed of facts which would have led a reasonable man to make further inquiry. *Jones* v. *Gorden* (1877), 2 A.C. 625. It was sufficient if he took the instrument honestly, and however gross his negligence may be, if he stops short of fraud, he has a good title. *Swan* v. *North British Australasian Co.* (1863), 2 H. & C. 184 ; *In re Gomersall* (1875), 1 Ch.D. 137. Further, section 90 of the *Bills of Exchange Act* says that " a thing is deemed to be done in good faith within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not." Accordingly, no man shall be deemed to be a *bona fide* holder of a negotiable instrument in respect of which he had a *suspicion* at the time he took it that there was something wrong on the part of the person with whom he was dealing. It is not necessary that a holder should have actual knowledge of what the particular wrong was, and if he, suspecting that there is something wrong, avoids inquiry, lest he should come to know of any defect in the title, he cannot be deemed to be acting honestly. *Jones* v. *Gorden* (1877), 2 A.C. 616, 628. But if as a matter of fact there was no *mala fides* or bad faith, then it is immaterial whether at the time of taking the instrument he was negligent or not. Thus, in *Raphael* v. *The Bank of England*, 17 C.B. 161 ; it was held that when a person takes a negotiable instrument *bona fide* he is entitled to recover upon it, even though he may, at the time, have had the means of knowledge of facts of which means he neglected to avail himself.

Indian Law.—As regards the Indian Law, prior to the passing of the Act, it was held by the Privy Council, following the English decisions on the subject, that mere negligence will not fix a party taking the instrument with the defective title of the party passing it to him. *Bank of Bengal* v. *Fagan*, 5 M.I.A. 27, 38. But under the Act as the words used in section 9 are " without having sufficient cause to believe," etc. it seems that the intention of the legislature is to make *due care and caution* on the part of the holder a test of his *bona fides* and that *mere* good faith on his part will not suffice. Accordingly it

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seems that *negligence* on the part of a holder at the time he takes up a negotiable instrument will disentitle him to the rights of a holder in due course. There will be held to be sufficient cause to believe in the existence of defects if the holder was in fact negligent or careless though he was acting honestly and in good faith. Thus, a transferee, who neglects to avail himself of the means at his disposal to detect the defects in the title of his transferor, cannot claim to be a holder in due course. Under the Indian Law it is not enough to show that the holder acquired the instrument honestly, if in fact he was negligent or careless. In this respect the Act seems to have followed the older English rule laid down by Lord Tenterden in *Gill* v. *Cubitt* (1824), 5 D. & R. 324 ; according to which due care and caution was made the test of *bona fides*. The Indian Law is stricter and requires from a person who claims to be a holder in due course a higher degree of diligence, whereas in England, it is sufficient for a man to show that he took the instrument in good faith. The Bombay High Court cited with approval the later English decisions as applicable to India, and without discussing the question in the light of the words of this section, has held that mere negligence does not invalidate the title of a person taking a negotiable instrument in good faith for value. *Raghavji Vizpal* v. *Navandas Parmanandas*, 8 Bom. L.R. 921.

There are many circumstances from which an honest holder may have " sufficient cause to believe " that there is something wrong with the instrument which he is taking. For example, if there is an irregularity patent upon the face of the instrument, it puts the holder on his guard, and if in spite of such an irregularity he takes it, he does so at his own peril. As the instrument itself conveys a warning to him, the rule *caveat emptor* applies. Thus, if a person takes a blank acceptance ; or a bill which is not complete and regular on the face of it, e.g. a bill without the signature of the drawer ; or a bill which has been torn up and the pieces pasted together, if the tears appear to show an intention to cancel it ; or a bill from which the payee's indorsement is altered and the alteration is apparent on the face of it ; in all these cases he takes the instrument at his own risk. *Awde* v. *Dixon* (1851), 6 Ex. 869 ; *Hogarth* v. *Latham* (1878), 3 Q.B.D. 643 ; *Ingham* v. *Primrose*, 7 C.B.N.S. 82 ; *Colson* v. *Arnot*, 54 New York, R. 253. But the fact that a cheque is post-dated does not make it irregular so as to preclude a *bona fide* purchaser of the instrument from claiming the rights of a holder in due course. *Royal Bank of Scotland* v. *Tottenham* (1894), 2 Q.B. 715.

Another circumstance which ought to put an honest holder on his guard is inadequacy of consideration. There is no criterion to useful for the purpose of determining the *bona fides* of the person who takes

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a negotiable instrument than the value he gives for it. As a general rule Courts do not inquire into the adequacy of a consideration given *bona fide*. The fact that a holder gives full value for the bill raises a strong presumption in his favour of his good faith. On the other hand, the inadequacy of consideration may be evidence of bad faith or fraud on the part of the holder, and may be an important factor in considering whether he had cause to believe that defects existed in the bill he was purchasing. *Raphael* v. *Bank of England* (1855), 17 C.B. 161. Though in neither case adequacy or inadequacy of consideration by itself may be conclusive of a holder's good faith or bad faith, sometimes, the inadequacy of the price may leave no doubt that the bill was not taken in good faith, and sometimes the adequacy of the consideration will be alone sufficient to establish good faith. Therefore, the extent of the consideration may be of the most vital importance in determining the question of *bona fides*. Thus, where a person offers to take up a bill for a considerable under-value, or for a consideration which is out of proportion to the face value of the bill, the presumption is that he knew that his transferor was not acting honourably or had not come by the bill honestly, and if he takes up such a bill without sufficient enquiry, he does so at his own peril, and the law will not protect him in the rights of a holder in due course.

Notice of defects.—If at the time when the holder acquires his title as such, he has sufficient notice that a defect exists in the title of his transferor, he is not a holder in due course. *Notice* means knowledge of the facts or a suspicion of something wrong combined with a wilful disregard of the means of knowledge. Notice of defects may be either actual or constructive. The proof of such notice may be given by evidence that the transferee received actual notice, or that he was made aware of facts from which knowledge of such defect may reasonably be inferred. *Muthia Chetty* v. *Kasivasi Somasundra*, 10 M.L.T. 79. All the circumstances in connection with the transaction, whereby the holder became the owner of the instrument, have a bearing on the question whether he had sufficient cause to believe that any defects existed in the title of his transferor. The ordinary rules of law as to principal and agent apply, and as regards parties affected with notice, notice to the principal is notice to the agent, and *vice versa*. *De la Chaumette* v. *Bank of England* (1827), 9 B. & C. 208.

The *time* at which notice affects the title of a holder, who takes a negotiable instrument, is *when* he takes the instrument, for then it is that his relation to the bill is fixed ; but notice received *subsequent* to his perfecting his title will not affect his title nor his right to sue upon it. Further, the defect which disqualifies a person from claiming the rights of a holder in due course, must be a defect in the title

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of his *immediate* transferor, and, accordingly, notice of defect in the title of any *prior* party does not affect the title of the holder. Thus, if a holder knew when he took the instrument of any fraud practised by any party prior to his transferor, he would not be affected by it.

"Payment in due course"

10. "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

NOTES

Payment in due course: Essentials.—Payment in order to operate as a discharge of a negotiable instrument must satisfy the following conditions:—

(1) That the payment should be in accordance with the *apparent tenor* of the instrument. *Apparent tenor*, means according to what appears on the face of the instrument to be the intention of the parties. It is, therefore, necessary that payment should be made at or after maturity. A payment before maturity is not a payment according to the apparent tenor of the instrument, and is therefore not a payment in due course. Thus, a bill payable after sight must not be paid before the last day of grace, and if not so paid, the payment is not in accordance with the apparent tenor of the instrument and consequently is not a payment in due course. A payment before maturity may discharge the immediate parties to the transaction, but its effect as to third parties is otherwise, for a payment in due course is a payment at maturity, and not by anticipation. Thus, if an instrument is paid off before maturity and is subsequently indorsed over, it is valid in the hands of a *bona fide* indorsee. *Burbridge* v. *Manners* (1812), 3 Camp. 193. A payment by the drawee or acceptor before maturity merely operates as a purchase of the instrument, and he is not precluded from re-issuing it. *Morley Culverwell* (1840), 7 M. & W. 174. Payment must be made by or on behalf of the drawee or acceptor.

It is also necessary that to be a payment in due course the payment should be made in *money* only, for the instrument is expressed to be payable in money only. The holder is entitled to be paid in money only, and no other form of payment can be substituted except

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with his consent, in which case, any mode of payment may be adopted, e.g. payment by cheque or another bill.

(2) That the person to whom payment is made should be *in possession* of the instrument. A payment cannot be a payment in due course if it is made to a person not entitled to receive it. It is necessary that payment should be made to a person who is in a position to give a valid discharge. So payment must be made to the "holder" or some person authorised to receive payment on his behalf. Where the instrument is payable to a particular person or order, and is unindorsed by him, payment to any person in actual possession of such an instrument will not amount to a payment in due course. But if an instrument is payable to bearer or is indorsed in blank payment to the person in possession of the instrument in the absence of suspicious circumstances is a payment in due course.

(3) That the payment should be made *in good faith, without negligence*, and under circumstances which do not afford a reasonable ground for believing that the person to whom it is made is not entitled to receive the amount. If there are suspicious circumstances, the person making the payment is at once put on his inquiry, and if he pays and neglects to make inquiries, such payment is not a payment in due course. Thus, a bill payable to bearer is stolen, and the thief presents it to the acceptor at maturity, if the acceptor pays it to him in good faith and without having reason to believe that the bill is a stolen bill, it is a payment in due course and the acceptor is discharged. But payment of an instrument, in effect payable to bearer, is not in due course, if the person paying knows or has reason to believe that the instrument is a stolen one and the person demanding payment is not entitled to receive it. A payment by the acceptor of a bill, after receiving orders from the drawer to stop payment is not a payment in due course. *Lalla Mal* v. *Keshav Dass*, 26 All. 495. In the case of a *Shah jog* hundi, payment made without inquiring as to the respectability of the person presenting it for payment, is not a payment in due course. *Ganesh Das Ram Naraian* v. *Lachmi Narayan*, 18 Bom. 570; *Bhuputram Hari Prio Coach*, 5 C.W.N. 313. Further, before making a payment on a negotiable instrument, the person making such payment should make sure that the person presenting it for payment is the person entitled to receive payment thereon. Thus, if the drawee of a hundi negligently makes payment to a wrong person, such payment is not a payment in due course, and the drawee will remain liable to pay again the lawful owner the full amount of the hundi. *Rai Bahadur Sahu Lalta Persand* v. *Charles Campbell McLeod*, 8 C.W.N. 841.

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"Inland instrument."

11. A promissory note, bill of exchange or cheque drawn or made in British India, and made payable in or drawn upon any person resident in British India, shall be deemed to be an inland instrument.

NOTES

Inland Instrument.—The requisites of an inland instrument are:—

(1) that it must be drawn and payable in British India, or

(2) that it must be drawn in British India upon some person resident therein, though it may be made payable in a foreign country. As a promissory note is not drawn upon any person, it is necessary that an inland note should both be drawn and payable in British India. An inland instrument does not cease to be such, because it is indorsed in a foreign country and is in circulation there. *Hirchfield* v. *Smith* (1865), L.R.I.C.P. 340. A bill of exchange drawn upon a resident of British India is an inland bill irrespective of the place where it was drawn. *A. G. Kidston & Co.* v. *Seth Bros.*, 57 Cal. 730.

Examples of inland bills

1. A bill is drawn in Calcutta on a merchant in Bombay but indorsed in Paris

2 A bill is drawn in Bombay on a merchant in Madras and accepted payable in America

3. A bill is drawn in Madras upon a merchant in Brussels and accepted payable in Bombay.

"Foreign instrument."

12. Any such instrument not so drawn, made, or made payable, shall be deemed to be a foreign instrument.

NOTES

Foreign instrument.—Foreign bills of exchange are:—

(1) Bills drawn outside British India and made payable in or drawn upon any person resident in any country outside British India.

(2) Bills drawn outside British India and made payable in British India, or drawn upon any person resident therein.

(3) Bills drawn in British India and made payable outside British India, or drawn upon a person resident outside British India, but not made payable in British India.

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The special thing to note about foreign bills is that they must be protested for dishonour if such protest is required by the law of the place where they are drawn. But protest in case of inland bills is optional. (See Ss. 100 and 104).

"Negotiable instrument."

13. (1) A "Negotiable instrument" means a promissory note, bill of exchange, or cheque payable either to order or to bearer.

Explanation (*i*) — A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

Explanation (*ii*) — A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an indorsement in blank.

Explanation (*iii*) — Where a promissory note, bill of exchange or cheque, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

(2) A "negotiable instrument" may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees.

NOTES

By section 3 of the Negotiable Instruments (Amendment) Act VIII of 1919, sub-section (I) of the Negotiable Instruments Act, 1881, has been amended. Prior to the amendment, sub-section (I) read as follows:

"A 'negotiable instrument' means a promissory note, bill of exchange, or cheque, expressed to be payable to a specified person or his order, or to the order of a specified person or to the bearer thereof, or to a specified person or to the bearer thereof."

Negotiable instrument.—Bills of exchange, promissory notes, and cheques are the most common examples of what are called "negotiable instruments." It is a fundamental principle of English law that no person can acquire a title to a personal chattel from a person who is not the rightful owner; or, in other words, a person cannot give a better title than he himself has,—*nemo dat quod non*

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habet. The only exceptions to this general rule arise by virtue of a statute or by custom prevailing amongst merchants. By the law merchant, bills, notes and cheques are made negotiable. "A negotiable instrument" says an eminent writer, "is one the property in which is acquired by any one who takes it *bona fide*, and for value, notwithstanding any defect of title in the person from whom he took it; from which it follows that an instrument cannot be negotiable unless it is such and in such a state that the true owner could transfer the contract or engagement contained therein by simple delivery of the instrument." (Willis, *The Law of Negotiable Securities*, page 6.)

Negotiable instruments differ from ordinary chattels in the following three important particulars:—

(i) The property in them, that is, the complete right of ownership, passes by delivery and not merely the possession, that is, the right to retain it as against any one except the true owner.

(ii) The holder in due course is not in any way affected by any defect of title of his transferor or of any prior party.

(iii) The holder in due course can sue upon them in his own name.

In order that a bill, note or cheque may be valid, it is not necessary that it should be "negotiable," because under the Act non-negotiable notes, bills, or cheques fall within the definitions contained in sections 4 and 5, and are subject to all the provisions of the Act, except those which relate to instruments which are negotiable.

According to the Act, an instrument to be negotiable must be payable in any one of the following five forms:—

(i) "to X."
(ii) "to X or order."
(iii) "to the order of X."
(iv) "to bearer."
(v) "to X or bearer."

Explanation (1).—This sub-section alters the law. Before the passing of the Negotiable Instruments (Amendment) Act VIII of 1919, it was held in India that a bill or note drawn payable to a specified person, without the addition of words authorizing transfer, was not negotiable. *Jethaparkha* v. *Ramchandra Vithoba*, 16 Bom. 689. Therefore, in India, an instrument drawn payable to a specified person, e.g. "Pay *A B*" was not negotiable. Under the old law, therefore, in order to make an instrument negotiable, it was necessary that the words "or order" or "or bearer" must have been added to the name of the payee. Though this was the law in India, the mercantile

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community as well as the banks dealt with cheques payable without the addition of the words "or order" or "or bearer" as cheques payable to that person or his order. It has, however, been held by the Bombay High Court (and confirmed on appeal) in *Dossabhai* v. *Virchand*, 21 Bom. L.R. 1, "that a cheque from which the word "bearer" is struck out and there is no substitution of the word "order" is not negotiable within the meaning of the Negotiable Instruments Act, 1881; and that the custom of trade which exists in the Bombay market whereby a cheque with the word "bearer" struck out without the word "order" is regarded as an "order" cheque and negotiable, extends the definition of the phrase "negotiable instrument" contained in section 13 of the Negotiable Instruments Act and therefore no legal recognition can be given to it." This decision caused a great deal of confusion in commercial circles. It was in order to bring the positive law into conformity with the prevailing custom, and to set right the difficulty created by this decision of the Bombay High Court that the Negotiable Instruments (Amendment) Act was passed. The amendment is incorporated in Explanation (i). Thus, where an instrument is made payable to a particular person and does not contain any words prohibiting transfer or indicating an intention that it should not be transferable, it should be deemed to be an instrument payable to "order" and is negotiable. The result of the amendment is that the words "order" or "bearer" are no longer necessary to render a bill, note or cheque negotiable.

Illustration

A bill or cheque is drawn in the form "Pay *C* one hundred rupees." This, in legal effect, is a bill or cheque payable to *C* order, and is a negotiable instrument.

From this it follows that when a bill, note or cheque contains words prohibiting transfer or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but it is not a negotiable instrument.

Illustration

A note is drawn in the form, "I promise to pay Rs. 500 to *B* only." This note is not negotiable.

A promissory note passed in favour of plaintiff's son was allotted to the share of the plaintiff in a partition made by an award on which a decree was passed. The promissory note was not indorsed by the son in favour of the plaintiff. The plaintiff brought a suit to recover the amount due on the note making the son also a defendant. *Held*, that there was no assignment of the note by operation of law. (See Section 48). *Virappa Manvi* v. *Katti*, 36 B.L.R. 807.

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Explanation (2).—The word " bearer " is not defined by the Act, but it means the person in possession of a bill or note which is payable to bearer. By Explanation (ii) a bill, note or cheque is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an indorsement in blank.

Illustrations

(1) A promissory note in the form " three months after date I promise to pay bearer," is payable to bearer.

(2) A bill payable " to *AB* or bearer " is payable to bearer.

(3) A bill is made payable to " William Smith or order." William Smith indorses it in blank and negotiates it The bill is payable to bearer.

Explanation (3).—This explanation is declaratory. *Smith* v. *M'Clure* (1804), 5 East. 476 ; *Harvey* v. *Cane* (1876), 34 L.T.N.S. 64. It lays down that a bill " payable to the order of *X* " is in legal effect payable " to *X* or order," so that *X* can demand *payment* without giving a responsible indorsement, but if *X* orders it to be paid to any other person, he must indorse it. *X* of course is bound to give a receipt to the same extent as any other person who receives payment of money.

Negotiable instruments by usage or custom. Negotiability is a creation of mercantile custom, which thus became part of the law merchant. The test of negotiability is thus stated by Blackburn, J., who says: " It may, therefore, be laid down as a safe rule that where an instrument is by the custom of trade transferable like cash by delivery, and is also capable of being sued upon by the person holding it *pro tempore*, then it is entitled to the name of a ' negotiable instrument,' and the property in it passes to a *bona fide* transferee for value though the transfer may not have taken place in market overt." *1 Smith's L.C.*, 12th Ed., Vol. I, p. 535. By custom the character of negotiability has been acquired by certain documents. Thus, in England, exchequer bills, dividend warrants, circular notes, share warrants, scrip certificates, debenture bonds of companies, and bonds of foreign and colonial governments have been held to be negotiable by custom. *Brandao* v. *Barnett* (1846), 12 Cl. & F. 787 ; *Gorgier* v. *Mieville* (1824), 3 B. & C. 45 ; *London Joint Stock Bank* v. *Simmons* (1892) A.C. 201 ; *Bechuanaland Exploration Co.* v. *London Trading Bank* (1898), 2 Q.B. 658 ; *Goodwin* v. *Robarts*, L.R. 10 Ex. 337. In the case, however, of foreign instruments, the mere fact that they are negotiable in the country in which they were issued will not make them negotiable in England, unless they are negotiable by the usage of England. *Picker* v. *London and Country Banking Co.*

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(1827), 18 Q.B.D. 515. It is presumed, therefore, that the list of negotiable instruments may thus be indefinitely increased.

The Act mentions three kinds of negotiable instruments only, namely bills, notes, and cheques, but the fact that instruments other than these are not referred to in section 13 cannot be taken to imply that there can be no more negotiable instruments than those enumerated in this section. Usage may endow other instruments with the incidents of negotiability, and the Indian Legislature has indicated that Courts in India may follow the practice of English Courts in extending the character of negotiability to other instruments. Section 137 of the Transfer of Property Act says the instruments may become "by law or *custom* negotiable", and the Courts will recognise their negotiability. Thus, in India, Government promissory notes, *Shah Jog* hundis, delivery orders, and Railway receipts for goods have been held to be negotiable by usage or custom. *Bank of Bengal* v. *McLeod*, 5 M.I.A.A. 1; *Kanniyalal Boya* v. *Balaram*, 31 M.T.T. 284; *Anglo-India Jute Mills Co.* v. *Omada Mull*, 38 Cal. 127; *Ameerchand & Co.* v. *Ramdas Vithaldass*, 16 B.L.R. 525.

Government Promissory Notes.—Government promissory notes come within the definition of this section, and looking at section 6 of the Indian Securities Act (Act XIII of 1886), it appears that the Negotiable Instruments Act is intended to apply to Government promissory notes, *Hunsraj Purnanand* v. *Ruttonji Walji*, 24 Bom. 65, *the Bank of Bengal* v. *Mcleod*, 5 M.I.A. 1. They can be transferred only by indorsement on the back of the note and cannot be assigned as ordinary choses in action.

"Negotiation."

14. When a promissory note, bill of exchange, or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

NOTES

Transfer of a negotiable instrument.—A negotiable instrument may be transferred from one person to another in one of two ways:—

(1) By negotiation under the Negotiable Instruments Act. (Ss. 14, 46, 47, 48).

(2) By assignment of the instrument as an ordinary chose in action under the Transfer of Property Act, Chap. VIII, S. 130.

(1) **Transfer by negotiation.**—Transfer by negotiation is the only mode of transfer recognised by the Act. An instrument is said to be

negotiated from one person to another under such circumstances so as to constitute the transferee the holder of it. The holder of an instrument is one who is entitled in his own name to the possession of the instrument and to recover the amount due thereon from the parties thereto. (S. 8). Further, to constitute the transferee the holder of the instrument the provision of the Act with regard to the mode of transfer must be followed. These provisions are to be found in sections 47 and 48 of the Act. The transfer of a negotiable instrument payable to bearer can be effected by mere delivery, but if it is payable to order it can be negotiated by indorsement and delivery. (See Ss. 46, 47, 48). Thus, a promissory note payable to the order of the payee can only be negotiated by indorsement and delivery, and if such a note be assigned without indorsement, the assignee cannot sue on the note *as such*. *Arunachella Reddi* v. *Subba Reddi*, 17 M.L.J. 393. Similarly, a promissory note payable to order cannot, without indorsement, be *negotiated* by the mere execution of a deed of assignment. *Abbey Chetti* v. *Ramchandra Row*, 17 M. 461.

(2) **Transfer as a chose in action.**—Bills, notes and cheques are choses in action and as such have been held to be assignable without indorsement. The Negotiable Instruments Act leaves untouched the principles of the general law which apply to the transfer of choses in action. Thus, notes, bills and cheques may be assigned by instruments in writing and without any indorsement, but by such an assignment the assignee only acquires the rights of his assignor and no more. *Subba Narayan* v. *Ramaswami Aiyar*, 28 Mad. 244. The essential difference between transfer by negotiation and transfer as a chose in action lies in the fact that in the latter case the assignee does not acquire the rights of a holder in due course, but has only the right, title and interest of his assignor ; whereas in the former case, he acquires all the rights of a holder in due course. *Muhammad Khumarali* v. *Ranga Rao*, 24 M. 654. Non-negotiable bills, notes and cheques, cannot be assigned by mere indorsement, or by mere delivery, but if their transferability is not expressly prohibited, they may be assigned as choses in action or actionable claims by a separate instrument in writing under the provisions of the Transfer of Property Act. (Ss. 130-132). An assignee of such an instrument claiming under a mere indorsement cannot maintain a suit upon it. *Parfitt* v. *Chainsekh*, 144 P.R. 1906.

Points of difference between assignability and negotiability :

(1) In the case of transfer of negotiable instruments consideration is presumed to have been given until the contrary is proved. In

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the case of assignment of ordinary choses in action, consideration must be proved as in the case of any other contract.

(2) In the case of negotiable instruments, notice of transfer is not necessary, whereas in the case of assignment of choses in action, notice of the assignment must be given by the assignee to the debtor.

(3) To assignee of a chose in action takes it subject to the defences and equities between the assignor and the original debtor, even though he took the assignment in good faith and for value. But the transferee of a negotiable instrument, if he is a holder in due course, takes the instrument free from any defects in the title of his transferor, and thus at times may acquire a better title than his transferor.

Indorsement.

15. When the maker or holder of a negotiable instrument signs the same otherwise than as such maker, for the purpose of negotiation, on the back or face thereof, or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the " indorser."

NOTES

Indorsement.—" Indorsement " ordinarily means anything written or printed upon the back of a deed or writing. The indorsement of a bill of exchange, promissory note, or cheque means the writing of a person's name on the back of the instrument for the purpose of negotiation. No particular form of words is necessary for an indorsement. *Sivarama Krishna Pattar* v. *Moideen Musaliar*, 33 Mad. 34. The indorsement must be written on the back of the instrument and must be signed by the indorser. The simple signature of the indorser on the instrument, without any additional words, is sufficient. But in order that the signature may operate as a transfer of the instrument the signature must be *on* the instrument or on a slip of paper *annexed* to it. An indorsement on the face of an instrument is valid. *Young* v. *Glover* (1857), 3 Tar. N.S.Q.B. 637 ; *Ex parte Yates* (1858), 2 De G. & J. 191 ; *Ramanlal Mookerjee* v. *Haran Chandra Dhar*, 3 B.L.R.O.C.J. 130. The signature, placed on the back of a negotiable instrument of a person, who is neither the *maker* nor the *holder* thereof, does not amount to an indorsement within the meaning of this section. *Thakursey Hansraj* v. *Kishen Das Rewachand*, 76 I.C. 282. An express promise in writing to indorse a bill is not an indorsement. *Harrop* v. *Fisher* (1861), 10 C.B.N.S. 204 ; *Rose* v. *Sims* (1830), 1 B. & Ad. 521. Similarly, the assignment of

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a note by a separate writing is not an indorsement. *Re Barrington* (1804), Scho. & Lef. 112. As there is no legal limit to the number of indorsements that may be written on an instrument, it may happen that there may be no room left to write them all on the back of the instrument. In such a case a slip of paper is annexed to it upon which all the extra indorsements may be written. The slip of paper so added is called "*allonage*". It becomes part of the bill, and indorsements may be written thereon. *Monmohinee Debi* v. *Secretary of State for India*, 13 B.L.R. 359, 373.

Further, the indorsement of a promissory note, bill of exchange or cheque is completed only by delivery, actual or constructive, made by the indorser, or by his duly constituted agent with the intention of passing the property therein. (See S. 46). *Denton* v. *Peters* (1870), L.R. 5, Q.B. 475. Until delivery of the instrument, the contract of the indorser on the bill or note is incomplete and may be revoked at any time. *Brind* v. *Hampshire* (1836), I.M. & W. 365, 373. "The liability of an indorser to his immediate indorsee arises out of the contract between them; and this contract in no case consists exclusively in the writing popularly called an indorsement which is indeed necessary for the contract in question: but that contract arises out of the written indorsement itself, the delivery of the bill to the indorsee and the intention with which the delivery was made and accepted as evinced by words, spoken or written by the parties, and the circumstances,—such as the usage of the place, the course of dealing between the parties and their respective situations,—under which the dealing took place." Per Maule, J., in *Castrinque* v. *Buttingieg* (1865), 10 Moo. P.C. 94, 108.

Who may indorse.—The answer to this question is to be found in the present section read with sections 8 and 51. Under the present section an indorsement can be made by the holder of a negotiable instrument or the maker signing it otherwise than as such maker. Section 51 provides that every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees of a negotiable instrument may indorse and negotiate it. A payee or indorsee may indorse an instrument only if he be a holder. By section 8, the payee of an instrument is the holder, and so he may indorse it. The present section, while it mentions the indorsements by the maker or holder of a negotiable instrument, does not provide for indorsements by the drawer of a bill when it is drawn payable to drawer's order. In such a case, the drawer, being in lawful possession of the instrument may indorse it. (See Explanation to S. 51). If a bill or note is made payable to the drawer's or the maker's order, in order to negotiate the instrument, the drawer or the maker should indorse it.

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But in indorsing such an instrument the maker is acting neither as maker nor as holder, but in a different capacity. He merely indorses the instrument as a person in lawful possession of the instrument. (See Explanation to S. 51). The payee of a promissory note may indorse it in his own favour, or two joint payees may indorse it in favour of one of themselves. *Muhammad Khumarali* v. *Ranga Rao*, 24 Mad. 654. Under the present section, a stranger cannot put his indorsement to a negotiable instrument. If, however, a person, who is neither the maker nor the holder of an instrument, " backs " it with his signature, he thereby neither becomes an indorser, nor incurs the liabilities of such a person ; but such a person may be held liable as surety if he intends to guarantee payment. If an instrument is indorsed by a stranger, no suit can be maintained thereon by him as the indorsement is not by a holder. *K. Naidu* v. *Muttiah Chetty*, 45 I.C. 186. Under the English Law such a person incurs the liabilities of an indorser to a holder in due course. (Bills of Ex. Act, S. 56). *Steele* v. *M'Kinlay* (1889), 5 A.C. 772, 782.

When in a bill payable to order the payee or indorsee is wrongly designated, or his name is mis-spelt he may indorse the bill as therein described, adding, if he thinks fit, his proper signature. *Willis* v. *Barret* (1816), 2 Stark. 29 ; *Leonard* v. *Wilson* (1834), 2 Cr. & M. 489. It may be stated that " Mrs. W. Brown " is legally a misnomer of the wife of W. Brown, and if her name is Sarah, her proper signature ought to be " Sarah Brown."

Indorsement "in blank" and "in full." "Indorsee."

16. (1) If the indorser signs his name only, the indorsement is said to be " in blank " and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be " in full " ; and the person so specified is called the " indorsee " of the instrument.

(2) The provisions of this Act relating to a payee shall apply with the necessary modifications to an indorsee (Act V of 1944).

NOTES

Indorsement in blank and full.—An indorsement in blank (also known as a " general indorsement ") specifies no indorsee ; it consists of the bare signature of the indorser, and a bill so indorsed becomes payable to bearer. Thus, a bill is payable to the order of Jonathan Jones. Jonathan Jones signs on the back of the bill thus: " Jonathan Jones." This is an indorsement in blank by Jonathan

Sections 16-17.]

Jones. In such a case, so long as the indorsement continues in blank, the property in the instrument may pass by mere delivery, in the same manner as an instrument payable to bearer. For, "There is no difference between a note indorsed in blank and one payable to bearer. They both go by delivery and possession proves property in both cases." *Peacock* v. *Rhodes* (1781), 2 Dong. 633.

An indorsement in full (also known as a "special indorsement") specifies, in addition to the signature of the indorser, the person to whom or to whose order, the instrument is payable. Thus, an indorsement, "Pay Jonathan Jones or order," or "Pay to Jonathan Jones," followed in each case by the signature of the indorser, is an indorsement in full. No specific form of words is necessary for an indorsement in full, it is sufficient if the words contain a direction of the nature contemplated by the section.

For specimens of Indorsements, see Appendix II.

Ambiguous instrument

17. Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.

NOTES

Ambiguous instrument.—The cases in which an instrument may be treated as ambiguous are: "Where in a bill the drawer and the drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note." (B. of Ex. Act, S. 5).

Illustrations

(1) *A* addresses an instrument in the form of a promissory note to *B* who accepts it. The holder may, at his option, treat it as a note or bill. *Block* v. *Bell* (1831), 1 Moo. & R 149; *Edds* v. *Bury* (1827), 6 B & C. 433.

(2) A bill is drawn by an agent acting within the scope of his authority upon his principal The holder may, at his option, treat it as a note or bill because the drawer and drawee are the same person.

(3) *X* draws a bill on *Y* and negotiates it away. *Y* is a fictitious drawee. The holder may treat the bill as a note made by *X*. *Smith* v. *Bellamy* (1817), 2 Stark. 223.

(4) A firm carries on business in Bombay and Calcutta The Bombay house draws a bill on the Calcutta house. The holder may treat it as a note made by the Bombay house payable in Calcutta. *Miller* v. *Thompson* (1841), 3 M. & Gr 576.

Sections 17-18.]

(5) The Directors of a Joint Stock Company draw a bill in the name of the company, addressed "to the cashier." The holder may treat it as a note by the company. *Allen* v. *Sea Fire Life Assurance Co.* (1850), 9 C.B. 574.

(6) An instrument in the form of a bill of exchange is not addressed to any one, it may be construed as a promissory note. *Fielder* v. *Marshall* (1861), 30 L.J.C. P. 158; *Peto* v. *Reynolds* (1854), 9 Ex. 410.

(7) An instrument on which the word *hundi* is engraved may be either a promissory note or a bill of exchange. A document in the following form:—

> Sixty days after date we promise to pay A, B or order the sum of Rs. 1,000 only for value received.

Across the document was written "Accepted" and signed by the maker X Y, it was held that the document was a promissory note. *Har Sook Das* v. *Dhirendra Nath Ray* (1941), 2 Cal. 107.

If the holder of the instrument once makes his election either way, he must abide by it, and cannot afterwards fall back and say that it is the other kind of instrument. *Sulleman Hussein* v. *The New Oriental Bank Corporation Ltd.*, 15 Bom. 267. In the event of the drawer's insolvency, only one proof is allowed against the estate and there cannot be two proofs by reason of the form of the instrument. *Banes de Portugal* v. *Waddell* (1880), 5 A.C. 161.

An ambiguous instrument should be distinguished from an inchoate instrument. In the case of an ambiguous instrument, the holder of it having made his election to treat the instrument as a note or bill can institute a suit on it, and he is not precluded from doing so because of the ambiguous character of the instrument. In the case of an inchoate instrument, it only operates as an authority to the holder to fill in the instrument, but until that is done the holder cannot maintain an action upon it. In the case of an ambiguous instrument, the Court puts a construction most favourable to its validity, and construes it as a bill or note. *Mare* v. *Charles* (1856), 5 E. & B. 978, 981. But an instrument in the form of a bill, containing neither the name of a payee nor of a drawer, is an inchoate instrument though it is addressed to a person and is accepted by him. Such an instrument cannot be treated as an ambiguous instrument, within the meaning of this section. *M'Call* v. *Taylor* (1865), 34 L.J.C.P. 365.

Where amount is stated differently in figures and words.

18. If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

Section 18.]

NOTES

Figures and words contradictory.—In bills and notes the amount is usually written in figures in the margin at the top of the instrument, and in words in the body of the instrument. But the figures at the top, called marginal figures, do not form part of the bill. The object of adding the marginal figures is that the amount of the instrument might strike the eye immediately, and may in fact form a summary of the contents. *Garrard* v. *Lewis* (1882), 10 Q.B.D. 30. The section says that when there is a discrepancy between the amount stated in figures and in words the amount stated in words shall prevail, and no extrinsic evidence can be adduced to explain the ambiguity. *Saunderson* v. *Piper* (1839), 5 Bing. N.C. 425.

Illustrations

(1) A bill is drawn "Pay to *X* or order the sum of one thousand rupees." In the margin the amount stated Rs. 100 This is a bill for Rs 1,000

(2) A bill is drawn for "five hundred rupees." In the margin is superscribed Rs 550. This is a bill for Rs. 500 only.

But if the amount is expressed in figures in the body of the instrument and in words in the margin and there is a discrepancy between the two, having regard to the words of the section, it seems that the amount stated in words shall prevail over that stated in figures. But Byles is of opinion that, "whether written in words or figures, the amount in the body of the bill is the amount to prevail. The superscription is a mere index or summary of the contents." See Byles on Bills, 18th Ed., p. 88, note (*r*).

Where there is an ambiguity as regards the words in the body of the instrument, the figures in the margin and the stamp may be looked at in construing these words. *Hutley* v. *Marshall* (1873), 46 L.T. 186. Again, if there is an obvious omission in the body of the instrument, the marginal figures may be referred to explain them. Thus, a bill ran "Pay fifty," and the marginal figures stated £50, it was held to be a valid bill for £50. *R.* v. *Elliot* (1777), 1 Leach. C.C. 175. An instrument is not rendered invalid by obvious or intelligible mistakes or omissions in the written words, where the intention is quite clear. *Phipps* v. *Tanner* (1833), 5 C. & P. 488; *R.* v. *Post* (1806), R. & R. 101. Thus, where a promissory note bearing 6*d.* stamp, with the figures £50 in the margin, was made, but no amount was stated in the body, it was held that as between the parties it was a good note for £50 there being evidence to show that they had so regarded it. *Henry* v. *Addy* (1910), 2 I.R. 688.

Sections 19-20.]

Instruments payable on demand.

19. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.

NOTES

Instruments payable on demand.—This section must be read with Section 21 of the Act, the first sentence of which seems to form part of this section. The following instruments are payable on demand :—

(1) A promissory note or bill of exchange is payable on demand :—

(*a*) when it is expressed to be payable "on demand," or "at sight," or "on presentment." (S. 21).

(*b*) when no time for payment is specified in it. (S. 19).

(2) A cheque is always payable on demand and it cannot be expressed to be payable otherwise than on demand (Ss. 6, 19).

Inchoate stamped instruments.

20. When one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein, and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount : Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

NOTES

Inchoate instrument.—The principle of the rule contained in this section is that a person who gives another possession of his signature on a blank stamped paper, *prima facie* authorises the latter as his agent to fill it up and give to the world the instrument as accepted by him. The principle is one of estoppel. This section enables persons to lend their mercantile credit to others by the issue or negotiation of stamped papers containing their signatures and intended to be filled up by the holders as negotiable instruments. (Daniel, Sec. 142). By such signatures, they bind themselves, as

Section 20.]

drawers, makers, acceptors or indorsers. Their signatures on the blank paper purport to be an authority to the holder to fill up the blank, and complete the paper as a negotiable instrument, and thereafter such parties become liable in the capacity in which they signed. The instrument may be either wholly blank or incomplete in any particular; in either case, the holder is authorised to make or complete the instrument as a negotiable instrument. The right of filling up a blank or inchoate instrument may be exercised by any holder, and the first holder to whom the paper is delivered is not the only person empowered to fill in the omission. *Crutchley* v. *Clarence* (1813), 2 M. & S. 90; *Schultz* v. *Astley* (1836), 2 Bing. N.C. 544. But the liability of a person who signs and delivers a blank or an inchoate instrument arises only when the blanks are filled in and the instrument completed. Till then, the instrument is not a valid negotiable instrument, and no action is maintainable on it. *Montague* v. *Perkins* (1853), 22 L.J.C.P. 187; *Ex parte Hayward* (1871), L.R. 6 Ch. 546. The capacity in which a person signs an inchoate instrument may be determined by the mode and place in which he puts his signature. *Foster* v. *MacKinnon* (1869), L.R. 4 C.P. 704, 712. An instrument may be wholly blank or it may be wanting in some one or more of the requisites of a complete bill. It may be blank as to date, as to amount, as to drawer, as to payee, etc. If on an instrument the date be left blank, any holder has a right to insert the true date. If a man accepts a bill which is blank as to the name of the drawer, and delivers it to another person, the latter is entitled to insert his name as a drawer, or to negotiate it. *Herdman* v. *Wheeler* (1902), 1 K.B. 361, 369. Similarly, where an instrument is executed with the name of the payee left blank, any *bona fide* holder for value may fill it up with his own name and sue upon it. *Schultz* v. *Astley* (1836), 2 Bing. N.C. 544; *Russell* v. *Langstaffe* (1780), 2 Doug. 514. Where the holder is given authority to complete an instrument by filling in a certain amount and he in fact fills up a higher amount, the signor will not be bound by it except to a holder in due course. *Swan* v. *North British Australasion Co.* (1863), 2 H. & C. 175, 184; *Lloyd's Bank* v. *Cooke* (1907), 1 K.B. 794.

Delivery and stamp necessary.—But the section requires as a condition of liability, that the signor, as a maker, drawer, indorser, or acceptor should *deliver* the instrument to another. There must be a negotiation of the instrument, that is, a transfer from one person to another, in order to render the signatory of the document liable upon it. In the absence of delivery, the signor is not liable. Thus, where a man signed a blank acceptance, with a stamp upon it, and

Section 20.]

kept it in his desk, from where it was stolen completed and negotiated as a bill, it was held that he was not even liable to a holder in due course. *Baxendale* v. *Bennett* (1878), 3 Q.B.D. 525 ; *Awde* v. *Dixon* (1857), 6 Ex. 869. If an inchoate instrument is delivered by the signor to another for safe custody, and the latter without instructions fills it up and negotiates it, under the English Law the person so delivering the instrument is not even liable to a holder in due course, as he did not deliver the instrument for the purpose of converting it into a bill. *Smith* v. *Prosser* (1907), 2 K.B. 735. Though it is not clear whether the same rule prevails in India, it is submitted that the same should be the rule in India, as the present section gives authority to fill the instrument only to a *holder*. *The Punjab National Bank Ltd.* v. *Mercantile Bank of India Ltd.*, 13 Bom. L.R. 835. Further, in order that the statutory estoppel provided for by this section may arise, it is necessary that the paper signed and delivered must be stamped in accordance with the law relating to negotiable instruments in force in British India at the time it is so signed and delivered. If the paper be unstamped, the signor is not estopped from showing that the instrument was filled without his authority. *Smith* v. *Prosser* (1907), 2 K.B. 735. If the paper be void for want of stamp, then the signor will not be liable.

Holder—Holder in due course—Excess of authority.—Under the section, the authority to fill up a blank or inchoate instrument may be exercised by any "holder." This right is not restricted to the first holder to whom the paper is delivered, and the person who receives an instrument, while still incomplete, from a former holder, has the authority of the former holder delegated to him. But this right cannot be exercised by a person who is not a "holder." Thus, an agent, to whom a blank stamped paper is given to be retained by him till further instructions are received from his principal, has no authority to fill up and negotiate it.

A person, who signs and delivers a blank or an incomplete instrument, gives, *prima facie* authority to the holder thereof, to make or complete a negotiable instrument for any amount not exceeding that covered by the stamp. If the authority to fill the amount has been clearly stated, as between the parties to the instrument when completed, there is no liability attaching to the person who has signed it, if the authority is exceeded, because the proviso to the section says that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder. But if the instrument is completed and negotiated to a holder in due course, he is entitled to enforce payment of the full amount even though the authority has

Section 20.]

been exceeded, and even though the signor might have given secret instructions to the holder that it should be filled in for a smaller amount. *Baxendale* v. *Bennett* (1878), L.R. 3 Q.B.D. 525; *London & S. W. Bank* v. *Wentworth* (1880), L.R. 5 Ex.D. 96. In the same manner the signor of an instrument cannot escape liability by showing that the person to whom the instrument was delivered, had, in violation of the confidence reposed in him, used the instrument for purposes other than those for which he was authorised to use it. *Schultz* v. *Astley* (1836), 2 Bing. N.C. 544. The estoppel created by this section against the signor of an incomplete instrument is only for the benefit of a holder in due course. Thus, if a holder has exceeded the authority given in filling an inchoate instrument, the signor is not estopped by this section from asserting, as against a holder other than a holder in due course, that the instrument has not been filled in accordance with the authority given. *Hogarth* v. *Latham* (1878), 3 Q.B.D. 643. But a person cannot claim the rights of a holder in due course, unless he can show that he took the instrument in a perfect shape and in terms a complete contract. "As to a *bona fide* holder, the question as to the effect of acceptance or indorsement having been written on a blank piece of paper can be of no importance unless he can be fastened with the notice of imperfection. If the holder has notice of the imperfection, he can be in no better position than the person who took it in blank as to any right against the acceptor or indorsee who gave it in blank." *Hatch* v. *Scarles* (1854), 2 Sm. & G. 147, 153.

Illustrations

(1) A bill is drawn "payable to . . . or order." Any holder for value may write his own name as payee in the blank and sue upon the instrument. *Crutchley* v. *Mann* (1814), 5 Taunt 529.

(2) *A* owes *B* Rs. 1,000. *A* gives *B* a blank acceptance for Rs. 1,000. *B* may fill in his own name as drawer and payee and recover the amount from *A*. *Carter* v. *White* (1882), 20 Ch.D. 225.

(3) *A* signs as acceptor on a bill bearing a twelve anna stamp with the amount left blank. In the margin is superscribed Rs. 100. This is fraudulently altered to Rs. 1,000 and the bill is, in words, filled in for a thousand rupees. The bill gets into the hands of a holder in due course. The latter can recover rupees one thousand from *A*. *Garrard* v. *Lewis* (1882), 10 Q.B.D. 30.

(4) *A* gives a blank acceptance to a money-lender, who fills it up as a bill drawn payable to drawer's order and inserts a fictitious signature as that of drawer and indorser. The bill is negotiated to *H*, a holder in due course. *H* can recover upon it. *Schultz Astley* (1836), 2 Bing. N.C. 544.

(5) *A* signs, as maker, a blank stamped and gives it to *B*, and authorises him to fill in as a note for Rs. 500, to secure an advance which *C* is to make to *B*. *B* fraudulently fills it up as a note for Rs. 2,000, payable to *C*, who has in good faith advanced

Sections 20-21.]

Rs. 2,000. *A* is estopped from setting up *B*'s fraud, and *C* is entitled to recover Rs. 2,000 from *A*. *Lloyds Bank* v. *Cooke* (1907), 1 K.B. 794.

(6) *A*, the acceptor of a bill, is asked to renew it. *A* accordingly signs his name on the *back* of a blank stamped bill form. This is an authority to fill it up as a bill making *A*, liable as an *indorser*, and not as an acceptor. *Belfast Banking Co.* v. *Keown* (1898), 33 Ir. L.T.R. 95.

"At sight." "On presentment." "After sight."

21. In a promissory note or bill of exchange the expressions "at sight" and "on presentment" mean on demand. The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance.

"At sight," "on presentment," and "on demand."—Though the expressions "at sight" and "on presentment" mean "on demand," yet instruments containing these expressions bear a different signification from those which are expressed to be payable on demand. In case of ordinary instruments expressed to be payable "on demand" it is not necessary that they should be presented for payment; whereas in case of instruments payable "at sight" or "on presentment," they must be presented before payment can be demanded on them. Again, though the words "at sight" mean "on demand," yet for the purpose of limitation a bill payable "at sight" is regarded as different from a bill payable "on demand." In the former case the period of limitation is three years from the date when the bill is presented, in the latter case the time is three years from the date of the bill or note. (Indian Limitation Act, Second Schedule, Articles 70, 73).

"After sight," "after date."—The expression "after sight" cannot be put in a bill or note by itself, without stating the period "after sight" at the expiration of which it is to become payable. Notes and bills may be expressed to be payable at a certain period "after sight," or "after date," or "after the occurrence of a specified event," which is certain to happen, though the time of its happening may be uncertain. Thus, a note or a bill may be made payable "fifty days after sight," or "six months after date," or "sixty days after the death of *A*." The expression "after sight" is differently used in bills and notes. In a note, it means that payment is not to be demanded till it has been *exhibited* to the maker, because a note is incapable of acceptance; whereas in a bill, it means that the sight must appear in a legal way, that is after acceptance, if the bill has been accepted, or after noting for non-acceptance or protest for non-acceptance. *Homes* v. *Kerrison* (1810), 2 Taunt. 323; *Campbell* v. *French* (1795), 6 T.R. 200, 212.

Section 22.]

"Maturity."

22. The maturity of a promissory note or bill of exchange is the date at which it falls due.

Days of grace.

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight, or on presentment, is at maturity on the third day after the day on which it is expressed to be payable.

NOTES

Sections 22-25 lay down rules for determining the time at which negotiable instruments fall due.

Days of grace.—Days of grace are days of indulgence originally granted to the acceptor for the payment of his bill of exchange. It was originally a gratuitous favour, but the custom of merchants has rendered it a matter of legal right. The instruments which are entitled to days of grace are all instruments other than those expressed to be or in effect payable on demand. Therefore, the following are not entitled to days of grace : a cheque, a bill or note payable " at sight," or " on presentment," or " on demand," or in which no time for payment is specified. But days of grace are allowed on all bills and notes that are expressed to be payable on a specified day, or at a certain period after date, or after sight, or at a certain period after the happening of a certain event. *Brown* v. *Harraden* (1791), 4 T.R. 148. Three days are allowed to these instruments after the day on which they are expressed to be payable. Thus, a bill, not expressed to be payable on demand, at sight or on presentment, is at maturity on the third day after the day on which it is expressed to be payable.

Illustrations

(1) A bill dated 30th November is made payable three months after date. It falls due on 3rd March.

(2) A note dated 1st January is payable one month after sight. It falls due on 4th February.

(3) A bill dated 1st January is payable thirty days after date. It falls due on 3rd February.

(4) A hundi payable on 28th January falls due on 31st January. *Nanak Singh* v. *Kesho Das*, 27 Ind. Cas. 608.

(5) A hundi drawn on 7th May, and payable after sixty-one days falls due on 10th July. *Ganga Prasad* v. *Hira Lal*, 39 All. 86.

Where an instrument is payable by instalments it must be presented for payment on the third day after the day fixed for the payment of each instalment. Days of grace are allowed on each instalment. *Oridge* v. *Sherborne* (1843), 11 M. & W. 374. The use

Sections 22-23.]

of the word "punctually" in a note payable by instalments does not take away the days of grace to which the maker is entitled. *Schaverien* v. *Morris* (1921), 37 T.L.R. 366. Days of grace form such an integral part of the contract of a negotiable instrument, that where days of grace are allowed on an instrument, the instrument, must be presented for payment only on the last day of grace. An earlier presentment is premature and void in order to charge the prior parties. *Wiffen* v. *Roberts* (1795), 1 Esp. 262. When a bill has been dishonoured by non-payment by the acceptor on the last day of grace, the holder is entitled to give notice of dishonour at once to persons whom he chooses to hold liable; but he has no cause of action on the bill against the acceptor or any other party until that day has expired. The cause of action on dishonour does not arise until the day next after the last day of grace. *Kannedy* v. *Thomas* (1894), 2 Q.B. 759. It is, however, competent for the parties to a negotiable instrument, to disallow by contract days of grace by any language to that effect, such as, "without grace," no grace," etc. Under the English Law, express provision is made to this effect by S. 14 (1) of the Bills of Exchange Act. In India, though the present section is not clear on the point, it seems that it is open to the parties to enter into a contract that the provisions of section 22 of the Negotiable Instruments Act, relating to days of grace shall not apply to them. *Valliappa Chetty* v. *Subramanian Chetty*. 26 M.L.J. 494.

Calculating maturity of bill or note payable so many months after date or sight.

23. In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted, for non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Illustrations

(*a*) A negotiable instrument, dated 29th January 1878, is made payable at one month after date The instrument is at maturity on the third day after the 28th February 1878.

Sections 23-24.]

(*b*) A negotiable instrument, dated 30th August 1878, is made payable three months after date. The instrument is at maturity on the 3rd December 1878.

(*c*) A promissory note or bill of exchange dated 31st August 1878, is made payable three months after date. The instrument is at maturity on the 3rd December 1878.

NOTES

Maturity of bills and notes payable after sight.—Where a note or a bill is expressed to be payable at a certain period after sight, or after date, or after a certain event, the period of payment terminates on the day of the month which corresponds with the date of the instrument, or with the day of acceptance if the bill be accepted, or presented for sight, or noted or protested for non-acceptance. Where a bill of exchange is expressed to be payable at a stated period after sight, and has been accepted for honour, the rule is that the period stated should terminate on the day of the month which corresponds with the day on which it was accepted for honour. The last sentence of the section in effect means that the term "month" in a bill or note means a calendar and not a lunar month. The computation of time in India must always be made according to the British calendar.

Usances.—Continental bills are sometimes drawn at usances. A *usance* is the time which is fixed by the custom of countries, for payment of bills drawn in one country and made payable in another. The length of a usance varies in different countries.

Calculating maturity of bill or note payable so many days after date or sight.

24. In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

NOTES

The rule stated in this section is that where a bill or note is payable after date or after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run. Where a bill drawn payable at a fixed period after date is not dated, the date of its maturity is calculated by computing the time from the date on which it was made. *Giles* v. *Brown* (1817), 6 M. & S. 73.

Sections 25-26.]

When day of maturity is a holiday.

25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

Explanation.— The expression "public holiday" includes Sundays, New Year's day, Christmas day : if either of such days falls on a Sunday, the next following Monday ; Good Friday ; and any other day declared by the Local Government, by notification in the official *Gazette*, to be a public holiday.

NOTES

Under this section all holidays are placed on the same footing, and unlike the English Law, no distinction is observed between bank holidays and other holidays. The section lays down a rule to be uniformly applied whenever the day of maturity falls on a public holiday, and enacts that if the day on which the instrument is payable is a public holiday, it is payable the next *preceding* business day.

CHAPTER III

PARTIES TO NOTES, BILLS AND CHEQUES

Capacity to make, etc. promissory notes, etc.

26. Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

Minor.

A minor may draw, indorse, deliver and negotiate such instrument so as to bind all parties except himself.

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instrument except in cases in which, under the law for the time being in force, they are so empowered.

NOTES

Contractual capacity.—This section lays down the rule as to the capacity of a person to incur liability as a party to a bill, note or

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cheque, and provides that capacity to make, draw, accept, indorse, deliver, and negotiate a bill, note or cheque, is co-extensive with capacity to contract. As a party to a bill, note, or cheque by doing any one of the above acts, undertakes certain liabilities, it is necessary that he should be competent to contract. If a party, who purports to do any one of these acts, is legally incompetent to do so, the contract is void as against him. But the incapacity of one or more of the parties to a negotiable instrument in no way diminishes the liability of the other competent parties thereto. The present section declares that a person's capacity to contract shall be regulated by his personal law, that is, "the law to which he is subject." Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject. (Indian Contract Act, Section 11).

Minor.—Under the Indian Contract Act, Section 11, a minor's contract is absolutely void, and is incapable of ratification after he attains majority. *Mohori Bibi* v. *Dharmodas Ghose*, 30 Cal. 539 ; *Dattaram* v. *Vinayak*, 28 Bom. 181. Contracts on bills of exchange and promissory notes, being generally considered to be injurious to the interest of the minor, as they usually carry interest, the minors do not become liable on these instruments and are incapable of making themselves liable as makers, drawers, acceptors or indorsers on a negotiable instrument. *Ma Hint* v. *Hashim Ebhrahim Meter*, 38 M.L.J. 353. Under the present section, if a minor makes, draws or indorses a note or bill, the holder would be entitled to enforce the instrument and receive payment on it against all parties *except the minor*. The minor himself cannot incur any liability on the instrument by reason of such making, drawing, or indorsing, and the instrument is wholly void as against him. Thus, an infant acts as a conduit pipe or a channel to convey title and liability, but not to originate it. Where there are several persons jointly mentioned in a bill or note, as drawers, makers, acceptors or indorsers, and one of them is a minor, though the minor cannot be sued, the other parties on that ground are not discharged from liability. The holder can sue the adult parties without joining the minor. *Burgess* v. *Merill* (1812), 4 Taunt. 468 ; *Boyle* v. *Webster* (1852), 17 Q.B. 950. Again, a minor cannot bind himself by accepting a bill, or making a note, although the section does not deal with the case of the acceptance of a bill or the making of a note by a minor. Such a bill or note is not enforceable against the minor, but is enforceable against the other adult parties. A person who accepts a bill when he is of full age is liable on it though it was drawn when he was a minor. *Stevens* v. *Jackson*

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(1815), 4 Camp. 164. A person is not precluded under this section of the Act from denying the validity of the note on the ground that he was a minor at the date of the note, as the specific provision in section 120 is subject to the general rule enacted in section 26. *Chengal Roya Chetty* v. *Nainappa Naicker*, 117 I.C. 133. But it seems that though a minor cannot incur liabilities on a bill or note, he can acquire rights under it, and if he becomes the holder of a bill or note, he is perfectly entitled to sue upon the instrument all the prior parties thereto. *Warwick* v. *Bruce* (1813), 2 M. & S. 205. A promissory note payable on demand and executed in favour of *A* when he was a minor is not void so as to desentitle him to sue on it. *Sathrurasu* v. *Bassappa*, 24 M.L.J. 363. But such a suit must be instituted in the name of the minor by his next freind. (C. P. Code, O. XXXII, r. 1).

A minor cannot bind himself by a bill or note given by him for necessaries supplied to him. *Ex parte Margrett, Re Solly Koff* (1891), 1. Q.B. 413. But though the minor will not be personally liable on such a note or bill, the person who has supplied the necessaries is entitled to be re-imbursed from the property of the minor. (See Indian Contract Act, Sec. 68). *Williams* v. *Harrison* (1689), Carthew Rep. 160. Even where a minor executes a note or bill on the representation that he is of full age, it is not enforceable against him as the contract is void. *Kanhai Lal* v. *Babu Ram*, 8 A.L.J. 1058 ; *Dharasingh* v. *Gayanehand*, 16 A.L.J. 441. Accordingly, where an infant obtains a loan on a promissory note by falsely representing his age, he cannot be made to pay the amount of the loan as damages for fraud, nor can he be compelled in equity to repay the money. *R. Leslie Ltd.* v. *Sheill* (1914), 3 K.B. 607; *Mahomed Syed Ariffin* v. *Yeoh Ooi Gark*, 43 I.A. 256. Again, a promissory note given by a person on attending majority, in renewal of a note executed by him while he was a minor, is also void in law for want of consideration. *Indra Ramaswami* v. *Anthiappa Chettiar*, 16 M.L.J. 422.

Lunatics, persons of unsound mind, drunken persons.—It may be stated as a general principle that want of capacity arising from any source, renders a contract void. Accordingly, contracts of lunatics, persons of unsound mind, and drunken persons are on the same footing, as agreements of minors, and are void. Bills and notes drawn or made by such persons are void as against them, though the other parties remain liable. A promissory note or a bill of exchange, executed by a lunatic or a person of unsound mind, is void as against him provided that, at the time when he executed the instrument he was incapable of understanding it and of forming a rational judg-

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ment as to its effects upon his interests. (Indian Contract Act, Sec. 12). But a person, though usually of unsound mind, may bind himself by a negotiable instrument entered into by him during a lucid interval. According to English Law, unsoundness of mind is not a valid defence, unless it is proved that the plaintiff had knowledge of the fact. *Imperial Loan Co.* v. *Stone* (1892), 1 Q.B. 599. The effect of drunkenness is the same, and a negotiable instrument executed by a drunken person will be void against him, if he shows that it was made by him at the time when by reason of drunkenness he did not know what he was about. *Molton* v. *Camroux* (1849), 4 Ex. 17.

Corporations.—Though the section says that a person having capacity to contract may bind himself by becoming a party to a note or bill, the proviso to the section declares that a corporation forms an exception to this general rule. The capacity of a corporation to make, draw, accept, and indorse a bill or note is left to be regulated by the law for the time being in force with reference to corporations. Although a corporation possesses capacity to contract, it cannot under the section, so bind itself, unless it is empowered in this behalf by the law for the time being in force. The power to bind itself by notes, bills and cheques is not necessarily implied in the general power possessed by a corporation to enter into a contract. A corporation, being an artificial creation of the law, possesses only those rights which the charter of its creation confers upon it, either expressly or as incidental to its very existence. *British South African Co.* v. *De Beers Consolidated Mines* (1910), 1 Ch. 354. The contractual capacity of a corporation or company depends generally upon the purposes for which it is formed, as set forth in the charter of incorporation or the memorandum of association by which it is constituted. If a corporation exceeds its powers in this behalf, and executes a negotiable instrument, the act is *ultra vires* the corporation, and is absolutely void and incapable of ratification even by the unanimous assent of all its members. On such a note or bill even a *bona fide* holder for value cannot make the corporation liable. *Broughton* v. *Manchester Water Works Co.* (1819), 3 B. & Ald. 1. But it is not necessary that such a power should be expressly given by the charter and the memorandum of association. Such a power can be *implied*, as necessary and incidental to the company's main objects, as disclosed in the charter or memorandum of association. Thus, a corporation or a company formed for the purpose of carrying on trade has capacity to draw, accept, or indorse notes and bills, and in favour of such a corporation or company the courts will imply a power to do those acts, without which it could not subsist as a corporation or a company carrying on its business according to its

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charter or memorandum. *Mayor of Ludlou* v. *Charlton* (1840), 6 M. & W. 815 ; *South of Ireland Colliery Co.* v. *Waddle* (1867), L.R. 4 C.P. 617 ; *Shamnuggar Jute Factory Co.* v. *Ram Narain Chatterjee,* 14 Cal. 189. But a non-trading corporation or company cannot exercise such powers, unless they are expressly given by its charter or memorandum of association. *Bateman* v. *Midlands Railway Co.* (1886), L.R. 1 C.P. 499, 505 ;*Wheatley* v. *Smithers* (1907), 2 K.B. 684 ; *Harmer* v. *Steele* (1845), 4 Ex. 1 ; *Rickets* v. *Bennett* (1847), 4 C.B. 595, 699.

Agency.

27. Every person capable of binding himself or of being bound, as mentioned in Section 26, may so bind himself or be bound by a duly authorized agent acting in his name.

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

NOTES

Principal and agent.—This section lays down that every person capable of binding himself or of being bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque, may so bind himself or be bound by a duly authorized agent acting in his name. An agent who signs a negotiable instrument for his principal may do so in one of two ways :—(1) The agent may simply sign the principal's name, for it is immaterial what hand actually signs the principal's name, if in fact there exists an authority to put it there. (2) The agent may sign by procuration stating on the face of the instrument that he signs as agent.

It is a general principle of commercial law, that the name of the person or the firm sought to be charged upon a negotiable instrument, as a principal party, must be clearly stated on the face or on the back of the instrument, so that the responsibility is made plain and can be instantly recognised, as the document passes from hand to hand. The principal's name must be so disclosed on the instrument that on a fair interpretation of it, it becomes quite apparent that his name is the name really liable upon the instrument. *Janki Das* v. *Kishen Prashad,* 46 Cal. 663. The effect of section 27 is that the principal could only be made liable through his agent on a negotiable instru-

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ment when the agent acts in his principal's name, that is, when he signs as agent and that an undisclosed principal cannot be sued on a negotiable instrument.

It is essential that at the time of putting his signature to the instrument the agent must have authority expressed or implied, to enter into the particular contract on behalf of his principal, who shall be legally competent to contract. The authority of an agent to make, draw, accept or indorse notes and bills depends upon the general law of agency, and is a question of fact. The utmost care and caution are required in dealing with persons who profess to act as agents on behalf of their principals. A prudent man will always call for proof that the alleged authority has been given. A signature by procuration operates as a notice that the agent has only a limited authority to sign, and that the principal will only be bound, if the agent in so signing was acting within the actual limits of his authority. Hence, a person who takes a bill signed *per pro,* must take it with the greatest caution, and should satisfy himself that the authority alleged to exist really exists. *Attwood* v. *Munnings* (1827), 7 B. & C. 278 ; *Alexander* v. *Mackenzie* (1848), 6 C.B. 766 ; *Smith* v. *Proser* (1907), 2 K.B. 735. Where a person signs a note or bill on behalf of another without his authority, or in excess of the authority conferred upon him, the signature is wholly inoperative, and the principal, in the absence of ratification or estoppel, will not be liable. *The Bank of Bengal* v. *Mcleod,* 5 M.I.A. 1. The person who takes such a note or bill acquires no title to it. Again, if an agent indorses without authority a bill on behalf of his principal, the indorsement conveys no title to the person taking it. *The Bank of Bengal* v. *Fagan,* 5 M.I.A. 27. An authority to sign and negotiate notes and bills must be expressed in clear and unequivocal terms. The section provides that a general authority to transact business, and to receive and discharge debts, does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal. *Hogg* v. *Smith* (1808), 1 Taunt 347 ; *Murray* v. *East India Co.* (1821), 5 B. & Ald. 204. Again an authority to draw bills of exchange does not of itself import an authority to indorse. Special authorities given to an agent to make, draw, accept or indorse notes or bills are construed strictly. Where there is a special authority to accept or indorse, the authority may be limited to the acceptance or indorsement of bills drawn by particular persons, or for a particular purpose or in a particular form. *Attwood* v. *Munnings* (1827), 7 B. & C. 278 ; *Fearn* v. *Felica* (1844), 14 L.J.C.P. 15. An authority to indorse does not import an authority to accept a bill.

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Partners.—The law, which regulates the liability of partners for the acts of their co-partners, is a branch of the law of agency. Every partner is in contemplation of law the general and accredited agent of the partnership, and each partner, who does any act necessary for, or usually done in, carrying on the business of such a partnership as that of which he is a member, binds his co-partners. (Indian Partnership Act, Ss. 18, 19). Thus, in a trading firm, each partner has *prima facie* authority to bind his co-partners by drawing, making, signing, indorsing, accepting, transferring, negotiating, or procuring to be discounted notes, bills, cheques and other negotiable papers in the name and on account of the partnership. *Bank of Australasia* v. *Breillat* (1847), 6 Moo. P.C.C. 152, 193. But the partner of a non-trading firm has no such implied authority to bind his co-partners by signing bills or notes in the partnership name. He can only bind the firm if he has express authority to do so, and it is incumbent upon any one taking his bills or notes to satisfy himself as to the extent of his authority. *Preambhai Hemabhai* v. *T. H. Brown,* 19 B.H.C.R. 319 ; *Brown* v. *Byers* (1847), 16 L.J. Ex. 112 ; *Dickenson* v. *Valpy* (1829), 10 B. & C. 128.

A firm cannot be made liable on a negotiable instrument signed by a partner of the firm, unless it is signed by him in the name of the firm. Thus, where a bill or note is signed by a partner in the name of the firm, it binds and renders liable all the partners in that trading firm, whether working, dormant, or secret, for credit is generally given to the firm of whomsoever it may consist. *Lloyd* v. *Ashby* (1831), 2 B. & Ad. 23 ; *Bunarasse Das* v. *Gholam Hussein,* 13 M.I.A. 358. But, where a partner executes a note or bill, and the same is not signed by him as partner or on behalf of the firm, but in his own name only, it does not bind nor render liable the other partners, even though it was drawn for the benefit of the firm and in consideration of an advance made on account of the joint trade. *Somasundaram* v. *Krishna Murthi,* 17 M.L.J. 126 ; *Kutti Ammu* v. *Raggi Seth,* 9 M.L.T. 120 ; *Yorkshire Banking Co.* v. *Beatson* (1880), 5 C.P.D. 109. A promissory note passed by one of the partners not in the name of the firm but in his individual capacity is binding on him alone and not on the other members of the firm. *Sharanbasappa* v. *Rachappa,* 35 B.L.R. 68.

Hindu joint family.—The manager of a Hindu joint family represents the family in all dealings with the outside world, and has implied authority to contract debts on behalf of the family, and for that purpose he has also implied authority to pledge the credit of the family, where he carries on the family business. *Sakhubhai* v.

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Maganlal, 26 B.L.R. 206. Thus, where a note or bill is executed by the manager of a Hindu Joint family, for moneys borrowed for the family purposes, or for the family business, the same is binding on all the members of the joint family, and can be enforced against them. *Raghunath Singh* v. *Sri Narayan,* 45 All. 434. On such an instrument the other members of the family cannot escape liability on the ground that it was not made or signed by them but by the manager. *Pachkauri Lal* v. *Mulchand,* 44 All. 544. The minor members of the joint family are equally liable with the major members to the extent of their shares. *Raghunathji Tarachand* v. *Bank of Bombay,* 34 Bom. 72 ; *R. P. Koneti Naicker* v. *T. Gopala Ayyar.* 38 Mad. 482.

Liability of agent signing.

28. An agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

NOTES

Agent how to sign in order to avoid personal liability.— When an agent signs or indorses a negotiable instrument, he must signify there on the capacity in which he does so, otherwise he will make himself personally liable upon the instrument. Unless the agent has clearly affixed his signature to an instrument on behalf of a principal, who is disclosed, or unless he has in some portion of the document clearly and unequivocally disclaimed personal liability, he will remain personally liable. In *Damodar* v. *Ramnath,* 34 B.L.R. 1327, a promissory note was passed by *D,* who was the chairman of certain Weaver's Co-operative Society. In the body of this note *D* described himself as chairman of the Society and agreed to pay the amount of the promissory note, but he did not exclude his personal liability, nor did he state in the body of the note that he was passing the note on behalf of or on account of the Society. On a suit by the plaintiff to recover the amount of the note, it was held that as there were no words excluding the personal liability of *D* in the note and as he was a party to the negotiable instrument, he was personally liable under section 28 of the Act. An agent who signs a promissory note, bill of exchange or cheque for his principal may sign the principal's name only. But in order to exclude personal liability he must state on the instrument itself that he signs *as agent,* or that he does

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not intend to incur personal liability. Lord Ellenborough, in *Leadbitter* v. *Farron* (1816), 5 M. & S. 345, 349, says: "Is it not, a universal rule that a man who puts his name to a Bill of Exchange thereby makes himself personally liable, unless he states on the face of the bill that he subscribes for another or by procuration of another which are words of exclusion? Unless he says plainly, '*I am the mere scribe*' he becomes liable." This section in effect embodies the principle of the above decision. The Act does not specify the manner in which an agent is to indicate that he signs as agent, but any words which clearly indicate that intention will be sufficient to protect the agent. Thus, an agent may sign by adding to his signature such words as "*sans recourse*," "without recourse," or other words to that effect. Again the words "*per pro*," that is "*per procurationem*," are often prefixed by an agent to the name of his principal. The best manner for an agent to sign or indorse a negotiable instrument, where he wishes to make his principal liable, is to sign or indorse the same as follows :—

(1) "For James Robinson, Richard Brown."

(2) "James Brown, by his agent or attorney Richard Smith."

(3) "James Brown, by Richard Harris."

(4) "James Brown, agent for Richard Smith."

(5) "For the A B Railway Co. X Y Secretary." *Alexander* v. *Sizer* (1869), L.R. 4 Ex. 102.

(6) "Hudson Co., Ltd. James Brown, Managing Director." *Chapman* v. *Smethurst* (1909), 1 K.B. 927.

In all the above cases the agent *is not personally liable.* The signature, however, must not be such as merely to describe him in his capacity as agent, or as filling a representative character, for this does not exempt him from personal liability. An agent, therefore, who signs a negotiable instrument, cannot escape personal liability thereon by the mere addition to his signature of words describing him as agent. *Thomes* v. *Bishop* (1734), 2 Stra. 955; *Rew* v. *Pettet* (1834), 1 A. & E. 196. Lord Cockburn, C. J. in *Dutton* v. *Marsh*, L.R. 6. Q.B. 361, says : "Where parties in making a promissory note or accepting a bill, describe themselves as directors, or by any similar form of description, but do not state on the face of the document that it is on account or behalf of those whom they might otherwise be considered as representing,—if they merely describe themselves directors, but do not state that they are acting on behalf of the company,—they are individually liable." Thus, an agent, who signs or indorses a negotiable instrument, cannot escape personal

liability thereon, by the mere addition to his signature of such words as "agent," "secretary," "manager," or "director"; because such words are merely *descriptive* and are regarded as *designatio personæ*. When the executant of a promissory note described himself as the managing director of a firm, it is not indicative of the fact that he was acting on behalf of the firm and the firm was not liable. *Chandal Mal Doongar* v. *Musammat Krishna Kumari*, I.L.R. (1945), 20 Lucknow 1. In the following cases the agent is *personally liable* :—

(1) A bill of exchange signed :" James Brown " } Directors
" Richard Harris " } of A. B.
" William Smith " } Co., Ltd.

[*Courtland* v. *Sanders* (1867), 16 L.J. (N.S.) 562.]

(2) "We, the *directors* of the A. B. Co., Ltd., promise to pay Rs. 10,000. . . ."

(Signed) " James Brown
Richard Harris."

(*Dutton* v. *Marsh* (1871), L.R. 6 Q.B. 361.),

(3) A bill indorsed : " James Brown, Agent."

(4) A note signed : " James Brown, Manager."

(5) A note signed : " James Brown, Secretary of A. B. Co., Ltd."

Non-liability of undisclosed principal.—It is a general principle of mercantile law that no person can be charged as a principal party to a negotiable instrument unless his name is in some way disclosed on the instrument itself. Thus, an undisclosed principal cannot be sued on a negotiable instrument, because in the case of such instruments passing from hand to hand, usage requires that the real contract should appear on the face of the instrument. Accordingly, section 28 of the Negotiable Instruments Act forms an exception to the general law relating to contracts, viz., that a principal, though undisclosed, may be sued, if it is discovered that some agent acted for him. It has been held that the general provisions of the Indian Contract Act, as to the rights and liabilities of undisclosed principals, were not intended to alter the well-established rules as to negotiable instruments, which declare that no person could be sued on an instrument, unless he appears as a party by name or designation on the face of the instrument. *Subba Narayan Vathiyar* v. *Ramaswami Aiyar*, 30 Mad. 88, 91. Where a person draws a negotiable instrument, and it does not appear on the face of it that he drew it as agent, he cannot set up as a defence that he drew the

bill as an agent. *Tarachand Ghose* v. *Mohesh Chunder Doss*, 2 W.R. 30.

The name of the person or firm to be charged upon a negotiable instrument must be clearly stated on the face or on the back of the document, so that the responsibility is made plain and can be instantly recognised as the document passes from hand to hand, and further, that the principal's name must be disclosed in such a way that on any fair interpretation of the instrument his name is the real name of the person liable. It is not open by way of claim or defence to show that the signatory was in reality acting for an undisclosed principal. *Sadasuk Jankidas* v. *Sir Kishan Pershad*, 46 I.A. 33, *Sitaram* v. *Chimandas*, 30 Bom. L.R. 1300. Where a person executes a promissory note in his own name and not as an agent acting in the name of another, the maker whose name appears on the promissory note can alone be made liable thereunder. Hence, members of a joint Hindu family cannot be held liable in a suit filed on a promissory note signed by one of its members in his individual capacity even though the maker of the promissory note may be proved to be the manager of the family. *Manchersha Ardesar* v. *Govind*, 32 Bom. L.R. 1035.

Remedy against agent.—When a person signs a bill or note on behalf of another without authority or in excess of the authority conferred upon him, what remedy has the holder against the person so signing ? If such a person signs as agent on behalf of some other person, he is not personally liable on the instrument, because the form of his signature negatives such a personal obligation. Again, the principal cannot be bound if the agent had no authority to sign or if he signed in excess of such authority. The only remedy of the holder is against the agent in an action for damages for deceit, and for a breach of the warranty of authority. *Polhill* v. *Walter*, 3 B. & Ad. 114.

Liability of legal representative signing.

29. A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

NOTES

Legal representative how to sign in order to avoid personal liability.—A legal representative may avoid personal liability on a bill or note signed or indorsed by him, by adding to his signature such

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words as " without recourse," or " without recourse to me personally." Unless, therefore, the legal representative in signing a negotiable instrument expressly limits his liability to the extent of the assets received by him, he will be held personally liable. *Ammalu* v. *Parwathi*, 33 M.L.J. 631. A promissory note headed " Estate of the late W," was passed by the defendants who were described as " executors of the estate of W ;" and was signed by the defendants " as executors of the estate of the late W." In a suit to recover the amount of the promissory note from the defendants, it was held that, under section 29 of the Negotiable Instruments Act, 1881, in the absence of express words limiting their liability to the estate of the deceased in their hands, the defendants were personally liable to pay the amount. *Hirjibhoy* v. *Ratanbai*, 35 B.L.R. 969. Thus, a legal representative may sign or indorse as follows, so as to exclude personal liability :—

A. B., executor of *C. D.*, without recourse."

" *A. B.*, executor of the said *C. D.*, without recourse against me personally."

" *A. B.*, executor of *C. D.*, with recourse against the estate of the said *C. D.*, only."

But when an executor or an administrator or a legal representative makes or indorses a bill or note in his own name adding thereto the words " executor," " administrator," or " legal representative," he will still be personally liable thereon, the representative terms being treated as mere surplusage. *King* v. *Thorn* (1876), 1 T.R. 487. Thus, an executor is personally liable where he signs or indorses a bill or note as follows :—

" *A. B.*, executor of *C. D.*" *Liverpool Bank* v. *Walkar* (1859), 1 De G. & T. 24.

" *A. B.*, administrator of the estate of *C. D.*" *Childs* v. *Monins* (1821), 2 Brod. & B. 460.

The legal representatives, however, of the deceased holder of a promissory note can file a suit for the recovery of the money due on the promissory note. *Shantaram* v. *Shantaram*, 40 B.L.R. 964.

Liability of drawer.

30. The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

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NOTES

Nature of drawer's engagement.—The person who is primarily liable to pay the amount of a bill is the acceptor. But the drawee may decline to accept a bill, or having accepted it may refuse or fail to pay at the stipulated time, then under this section the drawer becomes liable to the holder. The nature of the drawer's engagement is that by drawing a bill he engages that :—

(1) on due presentment it shall be accepted and paid according to its tenor,

(2) if it be dishonoured, he will compensate the holder, provided notice of dishonour has been duly given to him.

The contract of the drawer of a bill or hundi is only a conditional one. The drawer only undertakes to pay the amount of the bill in case of dishonour, so there is no demand or debt until dishonour. *A. B. Miller* v. *The National Bank of India,* 19 Cal. 146, 158. But once the bill is dishonoured and notice of dishonour is given, then whatever may be the state of account between the drawer and the drawee, the former becomes liable to the payee for the amount, which would place him at the stipulated time and place in the same position as if the money had been duly paid. *Sheth Ka-Haridas* v. *Bahia Bhai,* 3 Bom. 182. In the same manner, the liability of the drawer arises under this section, when a bill is dishonoured by non-acceptance, for it is a part of the drawer's engagement that on due presentment the bill will be accepted by the drawee. On dishonour of a bill by non-acceptance followed by a notice of dishonour, the right to sue the drawer for the full amount of the bill, immediately accrues to the holder, and there is no need to wait till the maturity of the bill or to present it to the drawer for payment. *Whitehead* v. *Walker* (1842), 9 M. & W. 506. If the holder of a bill of exchange, that has been dishonoured by non-acceptance, chooses to wait till the maturity of the instrument, and does not sue the drawer upon it, he does not acquire a fresh cause of action by reason of its non-payment on the due date. By the non-acceptance the holder acquires the most complete right of action against the drawer, and no subsequent act or omission of the drawer can give him a more extensive right against the drawer than he has already acquired. Similarly, the dishonour by non-acceptance of a *hundi* payable at a fixed date gives an immediate cause of action against the drawer, and there is no need to wait until the maturity of the *hundi* or to present it for payment. *Ram Ravji Jambhekar* v. *Prulhaddas Subkaran,* 20 Bom. 133.

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Where the drawer of a bill is sought to be made liable under this section, he could not plead a collateral agreement as a defence thereto. *Karim* v. *People's Bank of India,* 30 I.C. 35. The drawer of a bill, however, can exclude or limit his liability upon the bill. This limitation is effected by the insertion in the bill of an express stipulation negativing or limiting his own liability. Thus, "pay *X* or order without recourse to me", "pay *X* or order *sans recourse,*" "pay *X* or order at his own risk," are cases in which the drawer's liability is excluded or restricted.

Notice of dishonour.—The secondary liability of the drawer is dependent upon the notice of dishonour being given and requisite proceedings taken upon the same. The section requires that in order to give the holder a cause of action on the dishonoured bill, due notice of dishonour should be given to the drawer. The holder of a bill is bound to take all steps necessary to obtain payment and to preserve the rights of the drawer of the bill, such as due presentment and notice of dishonour. The omission on the part of the holder to give due notice of dishonour would discharge the drawer not only from his liability upon the bill, but also upon the original debt. The doctrine of notice of dishonour is based upon a just and equitable principle and may be applied to *hundis. Moti Lal* v. *Moti Lal,* 6 All. 78.

Liability of drawee of cheque

31. The drawee of a cheque having sufficient funds of the drawer in his hands, properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

NOTES

Relation between banker and customer.—As a cheque is a bill of exchange drawn on a specified banker, the drawee of a cheque must always be a banker. A banker's business consists in receiving money from or on account of a customer, and to repay the same on demand or when drawn on by cheque. In order to make a person a customer of a bank it is necessary that there must be some sort of account, either a deposit or a current account or some similar relation. *Lucave & Co.* v. *Credit Lyonnais* (1897), 1 Q.B. 148, 155. But a person who has no sort of account with a bank, but is merely in the habit of cashing cheques across the counter is not a customer. *Great Western Railway Co.* v. *London and County Banking Co.* (1901), A.C. 414, 420. The relation between a banker and a

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customer who pays money into a bank, is the ordinary relation of a *debtor and a creditor,* with a superadded obligation arising out of the custom of bankers to honour the customers' drafts, so long as there are assets of the customer in the hands of the banker. *Pott* v. *Clegg* (1847), 16 M. & W. 321; *Official Assignee of Madras* v. *Ramchandra Iyer,* 33 Mad. 134, 141. As soon as the customer pays money to the banker, the money becomes the property of the banker, and the latter can deal with it as his own, and is not bound to return it *in specie.* The relation of a banker and a customer does not partake of a fiduciary character, nor does it bear any analogy to the relation between a principal and his agent. *Foley* v. *Hill* (1848), H.L.C. 28. A banker's obligation to honour his customer's cheques may be extended by an agreement supported by a valid consideration to allow the customer to *overdraw* to a certain limit. *Cumming* v. *Shand* (1860), 29 L.J. Ex. 129.

The contract between the banker and his customer may be put an end to by either party. The customer can recover his loan by drawing a cheque on the bank for the amount deposited by him, and presenting it to the banker for payment. Similarly the banker, having decided not to have dealings with the customer, can repay the money or tender repayment to the customer when he pleases. *Bradley* v. *Agra Bank,* 101 P.R. 1885.

Cases in which a banker is justified or bound to dishonour cheques.—

(1) A banker is justified in refusing payment of a post-dated cheque presented for payment before its ostensible date. *Morley* v. *Culverwell,* 7 M. & W. 174, 178. A banker's business does not normally involve that a manager's authority shall extend to certifying post-dated cheques. Accordingly, where a manager had without authority certified a cheque post-dated to June 20, 1939, by writing on it June 13 " marked good for payment on 20-6-39 ", the bank were not liable on the cheque to a holder in due course, when on presentation on due date there were no funds in the drawer's account to meet the cheque. Further, the holder in due course could not claim either in contract on the actual words used in the certification, there being no privity of contract between him and the drawee bank and no consideration passing, or on an estoppel. *Bank of Baroda Ltd.* v. *Punjab National Bank, Ltd.,* 71 I.A. 124.

(2) Under the section, the banker is bound to pay a cheque only when he has " sufficient funds of the drawer in his hands." Therefore, if the customer has no funds to his credit, or if the amount standing to his credit is insufficient to cover the whole amount of

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the cheque, the banker is justified in refusing payment. Again, if the customer draws a cheque on the banker for an amount greater than that in the hands of his banker, the latter is not bound to honour the cheque even to the extent of the funds in his hands. But, if there be a contract between the banker and his customer, whereby the former undertakes to honour the cheques of the latter even without sufficient funds, a dishonour of the customer's cheques would render the banker liable to an action by the customer for breach of the contract. *Fleming* v. *Bank of New Zealand* (1900), A.C. 577.

(3) Under the section, the banker is bound to honour his customer's cheques only when the funds of the customer in his hands are "properly applicable to the payment of such cheque." Therefore, if the funds in the hands of the banker are subject to a lien, or the banker is entitled to a set-off in respect of them, the funds are not "properly applicable" to the payment of the customer's cheque, and the banker is justified in refusing payment.

(4) A banker is justified in refusing to honour a cheque which is irregular, or ambiguous, or drawn in a form of doubtful legality. *Emanuel* v. *Roberts* (1868), 9 B. & S. 121. Thus, a banker should refuse to pay an unstamped cheque, or where the date of the cheque is altered.

(5) A banker is justified in refusing payment of a cheque drawn by a customer having credit with one branch of the bank, where the cheque is drawn upon another branch in which he has no account or in which his account is overdrawn. *Woodland & Fear* (1857), 26 L.T.Q.B. 202; *Bank of Australia* v. *Murray Aynsley* (1898), A.C. 698.

(6) When a customer becomes insolvent, or an order of adjudication has been made against him, all his assets vest in the official assignee, and the banker should thereafter refuse to pay his customer's cheques. *Mathew* v. *Sherwell* (1810), 2 Taunt. 439.

(7) The duty and authority of a banker to pay a cheque drawn on him by his customer is determined by the customer countermanding payment. *Mowji Shamji* v. *The National Bank of India*, 25 Bom. 499, 515. Under such circumstances the banker is justified in refusing payment.

(8) Notice of the death of the customer determines the authority of the banker to honour a cheque, but if the banker pays a cheque before he receives notice of his customer's death, the payment is valid. *Tate* v. *Hilbert*, 2 Ves. III; *In re Beaumont*, 1 Ch. 889, 894.

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Liability of drawee of a cheque in case of dishonour.—In order to make a banker liable under this section, it is necessary that the cheque should be duly presented for payment, and the banker will not be liable if the cheque is not presented to him for payment within the usual banking hours. But, when a cheque is presented to a banker, and the latter having sufficient assets of his customer in his hands, dishonours it, he is liable to pay compensation to his customer for any "loss or damage" caused by such dishonour. The words "loss or damage" in the section includes in addition to any pecuniary loss or damage, the loss of credit or injury to reputation. *Rolin* v. *Steward* (1854), 14 C.B. 595. Accordingly, the customer may recover substantial damage, if he can show that the dishonour of the cheque caused loss of credit. *Marzetti* v. *Williams* (1830), 1 B. & Ad. 415; *Hopkinson* v. *Forster* (1874), L.R. 19 Eq. 74. Lord Tenterden says in *Marzetti* v. *Williams* (1830), 1 B. & Ad. 415. "It is a discredit to a person and therefore injurious in fact to have payment refused of a draft, for so small a sum, for it shows that the banker had very little confidence in the customer; it is an act particularly injurious to a person in trade." But where the drawer has not sustained any actual damage, he is entitled to recover nominal damages under the section. *Prehn* v. *Royal Bank of Liverpool* (1870), L.R. 5 Ex. 92. But though the drawee of a cheque is, in case of dishonour, liable to pay compensation to the drawer, there is no privity of contract between the holder of a cheque and the banker on whom it is drawn; therefore, in case of dishonour the holder has no remedy against the banker. In such a case the remedy of the holder is against the drawer, and the banker is not liable to the holder even though he has got sufficient funds of the drawer in his hands. *Hopkinson* v. *Forster* (1894), L.R. 19 Eq. 74.

Liability of maker of note and acceptor of bill.

32. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of the bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

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NOTES

Engagement of maker and acceptor.—The maker of a promissory note is primarily liable upon the instrument, and his engagement is absolute and unconditional. The maker of a note by making it engages that he will pay it according to its tenor. As the maker of a note is the party primarily liable upon the instrument his liability is absolute, and no notice of dishonour is necessary to charge him. But the maker is not liable until he signs the note and delivers it to the payee or the bearer. Further, the primary and absolute liability of the maker of a note must be distinguished from the secondary and conditional liability of the drawer of a bill of exchange. In general, the maker of a note corresponds to the acceptor of a bill of exchange, and they are both governed by the same rules. The moment it is proved that the maker of a note has made the note or the acceptor of a bill has accepted the bill, the *onus* is upon him to show that he is not liable upon the instrument. *Nazir Ali* v. *Khcerchand,* 36 I.C. 996. A person, who has executed a note, which contains an unconditional undertaking to pay, is not entitled to prove by oral evidence an agreement that it was intended that he was to be liable as a surety only. *Narasimmamurthi* v. *Ramasami Chettiar,* 24 M.L.J. 91.

The acceptor is the person primarily liable upon a bill of exchange, and he is liable by reason of his acceptance. His signature is considered as a *prima facie* acknowledgement that he has, in his hands, funds, which the drawer is entitled to call upon him to pay in the manner ordered by him. The liability of the acceptor of a bill is, like that of the maker of a note, absolute and unconditional. By accepting a bill the acceptor engages that he will pay it according to the tenor of his acceptance. But the liability of the acceptor does not attach merely because he signs his acceptance on the bill, it is necessary that he should either deliver the accepted bill or give notice of such acceptance to the holder. The drawer of a bill is not liable upon the bill till acceptance, and till then no privity exists between the drawee and the payee or any other holder. The holder cannot sue the drawee for refusing to accept. In case of dishonour the holder's remedy is against the drawer. (See S. 30). Under the section the liability of a maker of a note or the acceptor of a bill of exchange is subject to any *contract to the contrary.* The expression " contract to the contrary " is used to cover the case of accommodation bills and notes. Under this section the liability of the maker of a promissory note or the acceptor of a bill of exchange may be excluded or modified by a collateral agreement. " It is undoubtedly competent for parties to a bill to contract *inter se,* expressly or

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impliedly, to alter or even invert the positions and liabilities assigned to them by the law merchant. The drawer and acceptor of a bill may agree that, as between themselves, the acceptor shall have the rights of a drawer, and that the drawer shall be subject to the liabilities of an acceptor, and that agreement when proved will be binding upon them both, although it can have no effect upon the obligations to third parties interested in the bill, imposed upon them by the law merchant." *Steele* v. *McKinley* (1880), 5 A.C. 754, 778.

Payment must be according to tenor of note or acceptance.—Under the section the maker of a note must pay it according to the apparent tenor of the note, and the acceptor of a bill must pay it according to the apparent tenor of his acceptance. The distinction that exists between the maker of a note and the acceptor of a bill in the mode of payment arises from this. The maker of a note is the originator of the instrument, and after making it he can in no way alter it, while the acceptor of a bill is not the creator of the bill, the bill originates from the drawer, but when it is presented to the drawee he may give a qualified acceptance. Accordingly, when the acceptance is general, the acceptor is bound to pay the bill as it stands; if the acceptance is qualified, he is bound to pay only according to the tenor of his acceptance, and not according to the tenor of the bill as originally drawn. (See S. 86). In order that a maker or an acceptor may pay an instrument according to the tenor of the note or acceptance as the case may be it is necessary that : (1) the payment must be made to the *holder* of the note or bill; a payment to any other person does not operate as a discharge (See S. 78) ; (2) the payment must be made *at maturity*. The liability on the note or bill is not discharged by a payment before maturity.

Compensation for default.—In case of default of such payment the maker of a note or the acceptor of a bill is bound to compensate not only the holder of the instrument, but any party to the note or bill for loss or damage sustained by him and caused by such default. (As to "compensation," see S. 117). Any other party is entitled to recover compensation, as the loss or damage to such party arises on his paying to the holder the amount due on the bill or note. But in the case of accommodation bills and notes, the party for whose accommodation such instruments are made or accepted cannot claim compensation for loss or damage, unless he has, in the meantime, supplied the maker or acceptor with sufficient funds to honour the instrument at maturity. *Pogose* v. *Bank of Bengal*, 3 Cal. 174, 175. The acceptor of a bill is bound to make compensation under this section, and this liability cannot cease by reason of the fact that the acceptor cannot obtain delivery of goods in respect of his acceptance.

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Motishaw v. *The Mercantile Bank of India,* 41 Bom. 567. The facts in that case were as follows : On the 24th June 1914, a German, residing at Hamburgh, drew a bill of exchange upon the defendants in favour of the plaintiffs for £65-0-6 payable at 30 days' sight to the order of the plaintiffs for value received. The bill was purported to be drawn upon the defendants against 50 bales of goods per S. S. "Lichtenfels," a German steamer. It was presented to the defendants for acceptance with the shipping documents relating to the bales of goods mentioned in the bill ; and was accepted on the 20th July 1914 payable at the office of the plaintiffs in Bombay. The S. S. "Lichtenfels" reached Bombay just before the outbreak of war between Great Britain and Germany, and in order to evade capture left Bombay and took shelter in the neutral port of Marmagoa. The bill was presented for payment on the due date with the shipping documents, but was dishonoured by non-payment. In the meanwhile, the British Government issued a Proclamation authorising British subjects to make payments for the purpose of obtaining their cargoes in neutral ports to the agents of shipowners in an enemy country. The plaintiffs averred their readiness and willingness to hand over the documents against payment of the amount due under the bill. Eventually they filed a suit to recover the amount of the bill, alleging that the acceptance being unqualified and absolute the defendants were bound to pay. The defendants denied their liability contending that the acceptance was qualified, the bill having been drawn on them against goods and they need not pay till they were put in a position to receive the goods. *Held* that the plaintiffs were entitled to succeed from either point of view, for if the acceptance was unqualified the defendants were bound to pay on due date, and if the acceptance was qualified they were still bound to pay "at or after maturity" when money was demanded after the Proclamation whereunder consignees were permitted to take delivery of goods from enemy ships in neutral ports ; that the consideration for the acceptance did not fail, for the Proclamation permitted performance before it was too late of the condition alleged.

Only drawee can be acceptor except in need or for honour.

33. No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

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NOTES

Who can accept.—Under this section the persons who could accept a bill of exchange are :—

(i) The drawee of a bill, that is, the person directed to pay.

(ii) All or some of several drawees, where the bill is addressed to more than one drawee.

(iii) A drawee in case of need who is mentioned in the bill.

(iv) An acceptor for honour.

A bill of exchange, as a general rule, can only be accepted by the person or persons to whom it is addressed, and who is or are directed to pay it according to the order of the drawer. A bill, therefore, cannot be accepted by a stranger. The drawee, to whom it is addressed, cannot of his own motion, substitute another person in his place as drawee. A bill drawn on one person cannot be accepted by another, nor can a bill drawn on one person be accepted by two persons;—one named in the instrument and another a stranger. A bill may be addressed to two or more drawees but it cannot be addressed to two or more drawees in the alternative or in succession. Where a bill is addressed to two or more drawees, the bill should be accepted by all, but if only some of them accept it, the acceptance is a qualified one and the holder may treat the bill as dishonoured. (See S. 86). But if the holder does not treat the bill as dishonoured, the acceptance of the drawees accepting it will be good and binding on them, for the section provides that all or some of several drawees can accept.

As a general rule, no one can accept a bill, except the person to whom it is addressed, but a stranger can accept it, if he accepts it for the honour of any party already liable on the bill. Such a person is mentioned in the section as *an acceptor for honour.*

Where a bill of exchange is drawn against a named person, who accepts it not for himself, but for and on behalf of a corporation of which he is a member, there is no valid acceptance of the bill. *Ibrahim* v. *International Banking Corporation,* 27 B.L.R. 283.

If a bill is addressed to several drawees who are partners in a trading firm, each partner has *prima facie* authority to bind the firm by an acceptance in the name of the firm and for its usual business. When a bill is addressed to a firm and it is accepted by a partner, in order that the acceptance may bind the firm, it should be in the name of the firm. But if a partner accepts such a bill in his own name, he makes himself personally liable on the acceptance, but not

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the firm. On the other hand, if a bill is addressed to a partner personally, and is accepted by him in the name of the firm, the partner is personally liable as acceptor.

Illustrations

(1) A bill is addressed to William Smith. John Brown writes an acceptance on it. John Brown is not liable as acceptor. *In re New Fleming Spinning & Weaving Co. Ltd.*, 3 Bom. 439; *Davis* v. *Clarke* (1844), 13 L.J.Q.B. 305; *Fielder* v. *Marshall* (1861), 30 L.J.C.P. 158.

(2) A bill is addressed to William Smith. William Smith and John Brown write their acceptance on it. John Brown is not liable as acceptor. *Jackson* v. *Hudson* (1810), 2 Camp. 447.

(3) A bill is addressed to the "Directors of the Hudson Steamship Co. Ltd." The acceptance is signed by three directors and the manager. The manager is not liable as acceptor. *Bull* v. *Morell* (1840), 12 A. & E. 745.

(4) A bill is addressed to "William Smith, general agent of the Hudson Steamship Co. Ltd." William Smith accepts it thus: "Accepted on behalf of the Company—William Smith." William Smith is personally liable as acceptor. *Herald* v. *Connah*, 34 L.T. 885.

(5) A bill is addressed to "Harris and Co." William Smith who is a partner in the firm, accepts it in his own name. William Smith is liable as acceptor. *Owen* v. *Van Uster* (1850), 10 C.B. 318.

(6) A bill is addressed to William Smith who is a partner in the firm of "Harris & Co" William Smith accepts it in the firm's name. William Smith is personally liable as acceptor. *Nicholls* v. *Diamond* (1853), 9 Ex. 154.

Acceptance by several drawees not partners.

34. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

NOTES

Several drawees not partners.—Under this section, if a bill is addressed to several drawees, each can bind himself personally by his acceptance, but he cannot accept so as to bind the others except in two cases :—

(i) Where one partner accepts on behalf of the firm so as to bind the firm.

(ii) Where one drawee accepts as agent for another with the authority of the latter.

Liability of indorser.

35. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in

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case of dishonour by the drawee, acceptor, or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided.

Every indorser after dishonour is liable as upon an instrument payable on demand.

NOTES

Indorser's engagement.—Every indorser of a bill is in the nature of a new drawer, that is to say, his contractual relations with the holder resemble those of a drawer, and his contract like that of the drawer is only a *conditional* one. *Gills* v. *Freemant* (1853), 9 Ex. 25; *Label* v. *Tucker* (1867), L.R. 3 Q.B. 81. The engagement of the indorser of a bill is that on due presentment it shall be accepted and paid according to its tenor, and that in case of dishonour he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that notice of dishonour has been duly given to him. The engagement of the indorser of a note is similar to that of the indorser of a bill, subject to the proviso, that there is no engagement on his part as to acceptance, for a note is incapable of acceptance. The indorsement of a negotiable promissory note operates, in contemplation of law, between the parties thereto, as the drawing of a bill of exchange in favour of the indorsee, such indorsement being only a request of the indorser that the maker of the promissory note would pay the amount to the indorsee or to any other holder in due course. *Muhammad Khumarali* v. *Ranga Rao*, 24 Mad. 654. The liability of the indorser, however, does not arise under the section unless he *indorses and delivers* the instrument to the transferee, for no contract on a negotiable instrument is complete without delivery. Where a person indorses a bill or note for the accommodation of another, the party accommodated has no right to maintain a suit upon the instrument against the indorser. In the like manner, a person who is merely an indorsee for collection cannot maintain a suit against the indorser. *Lloyd* v. *Howard* (1850), 15 Q.B. 995. But in such cases the indorser cannot escape liability to a holder in due course. *Smith* v. *Knox* (1800), 3 Esp. 46. As in the case of a drawer, so also in the case of an indorser, reasonable notice of dishonour should be given, or received by him before he can be rendered liable on the instrument. The fact that the instrument has been dishonoured, and that intimation of such dishonour has been given to the indorser, are conditions precedent to the indorser being made liable on the instrument. *Sanchi Lal* v. *Onkar Mal*, 18 A.L.J. 281. In case of dishonour, the indorser is bound to

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pay, in addition to the amount of the bill, note or cheque, compensation to the holder for loss or damage caused to him by reason of such dishonour. All liability, however, may be negatived or made conditional by an endorser by adding words to his signature, which show that he is not to be held responsible; e.g., an indorsement followed by the words "*sans recourse*," or "without recourse," or other words to the same effect, excludes the liability of an indorser.

Liability of prior parties to holder in due course.

36. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

NOTES

Liability of prior parties to a holder in due course.—The expression "prior party" in this section means the maker or drawer, the acceptor, and all the intervening indorsers. Every prior party continues to remain liable on the instrument to every subsequent party, and to a holder in due course, until the instrument is duly satisfied. An instrument is deemed to be duly satisfied if the liability of all the parties is extinguished, and the instrument is discharged by payment or satisfaction thereof by the maker or acceptor at or after maturity. An instrument is not discharged by a payment by the maker, or the acceptor before its maturity. Where an acceptor of a bill pays and takes up the instrument before maturity, he can re-issue and further negotiate it, though he has no right to enforce payment on it against any intervening party to whom he was previously liable. *Burbridge* v. *Manners* (1812), 5 Camp. 184; *Hubbard* v. *Jackson* (1827), 4 Bing. 390.

Maker, drawer, and acceptor principals.

37. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

NOTES

Nature of the liability of parties to notes, bills and cheques.—The contract of the acceptor, the drawer, or the indorser of a bill is distinct from each other, and the liability of each arises solely out of his respective contract. Though each contracts to pay the same sum of money on the instrument, yet they all contract severally

and in different ways, and subject to certain conditions. *Pogose* v. *Bank of Bengal*, 3 Cal. 174, 184; *Doolarchand Shaoo* v. *Mohabeer Surum Ram*, 19 W.R. 304. A party to a note, bill or cheque is liable thereon either as a principal debtor or as a surety. This section and section 38 mention the cases in which parties to notes, bills, or cheques are liable as principal debtors, and those in which they are liable as sureties. Section 37 lays down that the maker of a note and the drawer of a cheque are the principal debtors, and all the other parties are liable as sureties. *Fentum* v. *Pocock* (1813), 5 Taunt. 192; *Heylyn* v. *Adamson* (1758), 2 Burr. 674, 676. But in the case of a bill until acceptance, the drawer is the principal debtor, and the other parties are liable as sureties, but after acceptance, the acceptor is the principal debtor and all other parties are sureties. The provisions of the Indian Contract Act which regulate the rights and liabilities of principal debtor and surety are, subject to the provisions of the Indian Negotiable Instruments Act, applicable to parties to bills, notes and cheques.

Alteration of liability of parties by special contract.—Though the general rule is that the maker, the drawer, and the acceptor are liable as principal debtors, and the other parties are liable as sureties, the section says that a contract to the contrary may be entered into whereby the parties may invert their liabilities. Thus, a drawer of a bill may make himself the principal debtor and the acceptor a surety for the drawer. Similarly, by a contract, the payee of a promissory note may make himself the principal debtor and the maker a surety for the payee. Similar contracts may be entered into between indorsers and indorsees. In the case of accommodation bills, there is always a presumption that there is a contract to the contrary. *Nanda Ram* v. *Sitla Prasad*, 5 All. 484. Thus, where the drawee of a bill accepts the bill for the accommodation of the drawer, the drawer is the principal debtor and the acceptor is the surety, so that if the drawer pays the bill he cannot proceed against the acceptor, but if the acceptor pays the bill then the drawer is bound to indemnify him. In the absence of a contract to the contrary, the liabilities of successive indorsers *inter se* will be determined according to the ordinary principles of the law merchant, which make a prior indorser indemnify a subsequent one. *Macdonald* v. *Whitefield* (1883), 8 A.C. 733.

By reason of section 37 of the Act, the maker even in the case of an accommodation note, remains liable as principal and payee as surety only, from the point of view of the holder's rights in the absence of a contract to the contrary. The words "a contract to the contrary" in that section refer to a contract which displaces the

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normal right which the holder possesses in law. *The Bank of Hindustan Ltd.* v. *Govindarajulu Naidu,* 57 Mad. 482.

Prior party a principal in respect of each subsequent party.

38. As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Illustration

A draws a bill payable to his own order on *B*, who accepts *A* afterwards indorses the bill to *C*, *C* to *D*, and *D* to *E* As between *E* and *B*, *B* is the principal debtor, and *A*, *C* and *D* are his sureties As between *E* and *A*, *A* is the principal debtor and *C* and *D* are his sureties As between *E* and *C*, *C* is the principal debtor and *D* is his surety

NOTES

Liability of parties inter se.—This section provides that as between the parties liable under section 37 as sureties for the maker, drawer, and acceptor, each prior party is a principal debtor in respect of each succeeding party. The parties are not mere co-sureties with rights of contribution under section 146 of the Indian Contract Act. Byles explains the relationship of parties in the following passage :— "Suppose a bill to have been accepted and indorsed for value. The acceptor is the principal debtor, and all the other parties are sureties for him, liable only on his default. But though all the other parties are in respect of the acceptor sureties only, they are not as between themselves, merely co-sureties, but each prior party is a principal in respect of each subsequent party. For example, suppose a bill to have been accepted by the drawee, and afterwards indorsed by the drawer and by two subsequent indorsers to the holder. As between the holder and the acceptor, the acceptor is the principal debtor, and the drawer and the indorsers are his sureties. But as between the holder and the drawer, the drawer is the principal debtor, and the subsequent indorsers are his sureties. As between the holder and the second indorser, the second indorser is the principal, and the subsequent or the third indorser is his surety." Byles, Bills of Exchange, 18th Edn. 272, 273. *Horne* v. *Rouquette* (1878), 3 Q.B.D. 514, 517.

Suretyship.

39. When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under Section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

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NOTES.

Suretyship.—Section 39 must be read subject to the provisions of the next section. Sections 134 and 135 of the Indian Contract Act lay down cases in which a surety is under certain circumstances discharged from his liability to the creditor. But section 39 of the Negotiable Instruments Act enables the holder of a bill of exchange to enter into any contract with the acceptor, without thereby losing his rights against the other parties, provided he expressly reserves his rights against those other parties. The reason of the rule is that such a reservation rebuts the implication that the surety was meant to be discharged, and also prevents the right of the surety against the principal debtor being impaired, the injury to such rights being one of the reasons for the discharge of the surety. *Kearsley* v. *Cole* (1846), 16 M. & W. 128.

Illustrations

(1) The holder of a bill for Rs. 5,000 takes from the acceptor Rs 3,000 in full satisfaction of his claim against him. All the other parties are discharged.

(2) The holder of a bill enters into a contract with the acceptor to give him time for payment. The drawer and the indorsers are discharged.

(3) The holder of a bill agrees with the acceptor not to sue him upon the bill or not to sue him for a certain time. The drawer and the indorsers are discharged.

(4) The holder of a bill takes a new bill from the acceptor payable at a future day. The drawer and the indorsers are discharged. *Gould* v. *Robson* (1807), 8 East. 576; *English* v. *Darley* (1880), 2 B. & P. 61. But where a new bill is taken by way of collateral security the indorsers are not discharged. *Pring* v *Clarkson* (1822), 1 B. & C. 14.

In all the above cases, however, the prior parties, namely, the drawer and all the indorsers, are not discharged from their liabilities to the holder, if the latter *expressly reserves* his right to charge them. But the scope of the section is limited to the case of the acceptor of a bill, and it does not enable the holder of a bill or note to effectually reserve his rights against the indorsers, when he enters into any such contract with the drawer or maker. The section, moreover, has no application where the acceptor is discharged not by reason of a contract between himself and the holder, but by some act or omission, the legal consequence of which is the discharge of the acceptor. Likewise, the surety is not discharged if the principal debtor is discharged not by the creditor's act but by operation of law. Thus, where the acceptor of a bill became insolvent, the holder's right to proceed against the other parties was not lost by reason of his proving in the insolvency and receiving a dividend, for the acceptor was discharged not by the act of the holder but by operation of law. *Re Jacobs* (1875), L.R. 10 Ch. App. 211, 213. Mere forbearance on the

Sections 39-40.]

part of the creditor not to sue or enforce his remedy against the principal debtor does not discharge the surety. The surety is also not discharged where the contract to give time to or not to sue the principal debtor is made by the creditor not with the principal debtor but with some third person. (Indian Contract Act, Ss. 136, 137). Section 39 of the Negotiable Instruments Act applies where a person signs a promissory note without adding anything to show that he is acting as executor or administrator of another. It has no application to the case where a person deals with another on the footing that the latter is an executor or administrator. *Pestonji* v. *Meherbai,* 30 B.L.R. 1407.

In the case of accommodation bills and notes, if the holder, with a knowledge of the relation of the parties, gives time to or agrees not to sue the accommodated party, the accommodation acceptor is discharged. *Davies* v. *Stainbank* (1854), 6 De G.M. & G. 679 ; *Overend Gurney & Co.* v. *Oriental Financial Corporation* (1874), L.R. 7 H.L. 348 ; *Pogose* v. *Bank of Bengal,* 3 Cal. 174 ; *Rama Kistnayya* v. *Kassim,* 13 Mad. 172 ; *Mulchand* v. *Madho Ram,* 10 All. 421.

Discharge of indorser's liability.

40. Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

Illustration

A is the holder of a bill of exchange made payable to the order of *B*, which contains the following indorsements in blank:

First indorsement, "*B.*"
Second indorsement, "Peter Williams."
Third indorsement, "Wright & Co."
Fourth indorsement, "John Rozario."

This bill *A* puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright & Co. *A* is not entitled to recover anything from John Rozario.

NOTES

Discharge of indorser's liability.—Similar provision is found in section 139 of the Indian Contract Act. The reason for this rule as to the discharge of the surety is that the latter enters upon his contract on the express understanding that he will, on performance of his engagement, be subrogated to the rights of the creditor. This section only applies to indorsers and not to drawers, whose rights and liabilities will be determined by the provisions of the Indian

Sections 40-41.]

Contract Act. The illustration to the section gives an instance of the discharge of an indorser by the act of a holder, who, without the indorser's consent, destroys the indorser's remedy against a prior party. Similarly an indorser will be discharged from his liability to the holder, where the latter destroys the securities given by the acceptor and which he had in his hands. The reason of the rule is that an indorser of a negotiable instrument, being in the position of a surety, is entitled to the benefit of those securities to which the holder can have no claim except for the instrument itself. *Aga Ahmed Isphani* v. *Judith Emma Crisp*, 19 Cal. 242 (P.C.) ; *Duncan Fox & Co.* v. *North & South Wales Bank* (1880), 6 A.C. 1. The rules as to the discharge of an indorser or indorsers is best illustrated by Daniel on Negotiable Instruments, Section 1307, in the following passage: " The contracts of the several indorsers are like so many links of a pendant chain ; if the holder dissolves the first every link falls with it. If he dissolves an intermediate link, all after it are likewise dissolved. But the last link supports nothing, and its dissolution injures no one."

The distinction between sections 39 and 40 may be noted: (1) Section 39 only applies to bills of exchange: whereas section 40 applies to all negotiable instruments. (2) Under section 39 express reservation by the holder of his rights against an indorser does not discharge him ; whereas under section 40 if the holder of an instrument destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from his liability to the holder, and an express reservation of the holder's rights against an indorser will not keep the remedy alive against such an indorser.

Acceptor bound although indorsement forged.

41. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

NOTES

Acceptor's liability on a forged indorsement.—As a general rule a forged indorsement can convey no title even to a *bona fide* holder for value, and such an indorsement cannot affect the title of the person whose indorsement had been forged. (See " forged indorsement," Notes to S. 58). Thus, an acceptor of a bill of exchange is not precluded by his acceptance from showing that the indorsement is forged. *Robinson* v. *Yarrow* (1817), 7 Taunt. 455. But this section lays down that if a person accepts a bill already indorsed,

Sections 41-42.]

he is precluded from setting up the forgery of the indorsement, if he knew or had reason to believe the indorsement to be a forgery. The reason of the rule is clear: if an acceptor knows or has reason to believe that an indorsement is a forgery, he ought not to accept the bill at all, but having accepted it with the knowledge that the indorsement is forged, he cannot be allowed to take advantage of his own wrong by showing that he is not liable on the plea of forgery. The section lays down that an acceptor cannot challenge a holder's title even through a forged indorsement, when he himself accepted the instrument with the knowledge of the forgery. The result of such an acceptance is that the acceptor is not relieved from liability. This section, however, has no application if the acceptor has no knowledge or reasonable ground for believing the indorsement to be a forgery.

Acceptor of bill drawn in fictitious name

42. An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

NOTES

Acceptor's liability for bill drawn in a fictitious name.—This section reproduces the rule of the English Common Law on the subject. That rule is: "Where a bill is drawn in the name of a fictitious person payable to the order of the drawer the acceptor is considered as undertaking to pay to the order of the person who signed as the drawer ; and therefore an indorsee may bring evidence to show that the signature of the supposed drawer to the bill and to the first indorsement, are in the same handwriting." *Cooper* v. *Meyer* (1820), 10 B. & C. 468.

When a bill is drawn payable to the order of the drawer, the drawer is also the payee of the bill. The expression, "a bill of exchange drawn in a fictitious name and payable to the drawer's order," therefore, means that both the drawer and the payee are fictitious persons. Who is a "fictitious" payee? "Whenever", says Lord Herschell, "the name inserted as that of the payee is so inserted by way of pretence merely, without any intention that payment shall only be made in conformity therewith, the payee is a fictitious person . . . whether the name be that of an existing person, or of one who has no existence." *Bank of England* v. *Vagliano Bros.* (1891), A.C. 107, 153.

Sections 42-43.]

Illustrations

(1) A bill purporting to be drawn by *D* to the order of *C & Co.* and to be indorsed by them, is accepted by *A*, the drawee, payable at his bankers. The bankers discharge the bill at maturity. It afterwards turns out that the signatures of *D* and *C & Co.*—the drawer and the payee—were forged by *A*'s clerk, who obtained the money. *C & Co.* are fictitious payees and the bankers can debit *A*'s account with the amount so paid. *Bank of England* v. *Vagliano Bros.* (1891), A.C. 107.

(2) The drawer, *D*, is induced by *A* to draw a cheque in favour of *P*, who is an existing person. *A*, instead of sending the cheque to *P*, forges his name and pays the cheque into his own bank. *P*, is not a fictitious payee, and *D*, the drawer, can recover the amount of the cheque from *A*'s bankers. *North & South Wales Bank* v. *Macbeth* (1908), A.C. 137 ; *Town & County Advance Co.* v. *Provincial Bank* (1917), 2 Ir. R. 421.

(3) *A*, a clerk of *B & Co*, draws up, according to usual practice, several cheques payable to customers of *B & Co.*, and gets one of the partners of *B & Co* to sign them. Instead of forwarding the cheques to the payees, *A* forges their signatures, and cashes them with *D*, a tradesman. The cheques are collected by *D*'s bankers. The payees are not fictitious persons, and *B & Co.* can recover the amounts of the cheques from *D*. *Vinden* v. *Hughes* (1905), 1 K.B. 795.

(4) *A*, a clerk of *D*, the drawer, by fraudulently representing to his employer that work had been done on their account by *P*, induces *D* to draw cheques in favour of *P*, for the pretended work. *A*, then forges the indorsement of *P*, and negotiates the cheques to *H*, a *bona fide* holder for value. The cheques are duly honoured by *D*'s bankers. *P* is a fictitious payee, and *D* cannot recover the amount of cheques from *H*. *Clutton & Co.* v. *Attenborough* (1897), A.C. 90.

The section says that where both the drawer and the payee of a bill are fictitious persons, the acceptor is liable on the bill to a holder in due course, if the latter can show that the signature of the supposed drawer and the first indorsement are in the same hand, for the bill being payable to the drawer's order the fictitious drawer must indorse the bill before he can negotiate it. But the liability of the acceptor in such a case is only to a holder in due course, and not to a person who knew or had reason to believe that the drawer or the payee was a fictitious person.

Negotiable instrument made, etc. without consideration.

43. A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But, if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

Exception I.—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed,

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can, if he had paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

Exception II.— No party to the instrument who has induced any other party to make, draw, accept, indorse, or transfer the same to him for a consideration which he has failed to pay or perform in full, shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

NOTES

Total absence or total failure of consideration.—Sections 43, 44 and 45 deal with the effect of total or partial absence or failure of consideration for a negotiable instrument. Section 43 deals with total absence or failure of consideration. Every contract, except those mentioned in section 25 of the Indian Contract Act, requires consideration to support it, and bills of exchange, promissory notes, and cheques are no exception to this general rule.

As regards negotiable instruments the presumption of law is, that every negotiable instrument was made or drawn for a consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for a consideration. [See S. 118(*a*) *Supra*; Indian Evidence Act, S. 114(*c*)]. The difference, however, between ordinary contracts and negotiable instruments is noticeable when a suit is brought on these contracts in a court of law. In the case of an ordinary contract, the onus of proof lies on the plaintiff to prove the existence of consideration; whereas in the case of negotiable instruments, it is for the defendant to prove absence of consideration, if that is his defence. As to "consideration," see Notes to section 9. This section lays down two rules :—

(1) A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which subsequently fails, creates no obligation of payment between the parties to the transaction. Therefore, as between *immediate parties* (that is, parties in direct relation with each other, e.g. between the drawer and acceptor, between the payee and the drawer of a bill, between the payee and the maker of a note, between an indorsee and his immediate indorser), a negotiable instrument made, drawn, accepted, indorsed or transferred without consideration or for a consideration which fails, creates no obligation of payment, and on such an instrument the defendant can successfully plead that no consideration

Section 43.]

moved from the plaintiff to the defendant. If consideration for a negotiable instrument paid at the time of making, drawing, accepting or indorsing it were to fail subsequently, such subsequent failure has the same effect as its original total absence. *Motishaw* v. *Mercantile Bank of India*, 41 Bom. 566; *Marshall & Co.* v. *Nagin-chand*, 42 Bom. 473.

(2) The plea of want of or failure of consideration between *immediate* prior parties may not be set up against a holder, who has given consideration for the instrument or against any subsequent holder deriving title from him. Therefore, as between *remote parties* (that is, parties who are not in direct relation, e.g. between the payee and the acceptor, between the indorsee and the acceptor, between an indorsee and a remote indorser), it is not sufficient for the defendant to show that he received no consideration for the instrument, but the plaintiff can only succeed if he can show that he or some intermediate holder had given value for the instrument, though the defendant might have received none. The failure of consideration, even if it be a total one, is no defence against a holder for value, or any person deriving title under him. Where a party, who has become the holder of a negotiable instrument without consideration, transfers the instrument to a holder for consideration, such holder and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

Illustrations

(1) *A*, is the holder of a bill for consideration. *A* indorses it away to *B* without consideration. The property in the bill passes to *B*. The bill is dishonoured at maturity. *B* cannot sue *A* on the bill.

(2) *A* owes *B* Rs. 500. In order to pay *B*, *A* asks *C* to draw a bill on *A* for Rs 500, in favour of *B*, as payee. *A* accepts the bill, the existing debt being the consideration. *B* is a holder for value and can sue *C* or any indorsee, though *C* has received no value. But *C* could not sue *A* on the bill since there was no consideration existing between them.

(3) *A* draws a bill on *B*. *B* accepts the bill without any consideration. The bill is transferred to *C*, without consideration. *C* transfers it to *D* for value. *D* can sue any of the parties *A*, *B* or *C*, though as between themselves there would be no right of action.

(4) *A* is the holder of a bill. *A* transfers it to *B* without consideration *B* transfers it to *C*, without consideration. *C* transfers it to *D* for value. *D* transfers it without consideration to *E*. *E* can recover the amount of the bill from *A*, *B*, *C*, in the same manner as *D* would have been entitled to do, though *E* gave no value for the bill and *A* received none. But *E* has got no right as against *D*.

(5) A promissory note, payable to order, was transferred by the payee for consideration, by means of a sale deed, but without any endorsement. In a suit by the transferee on the promissory note it was found that the note was *made* without con-

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sideration and thereupon the plaintiff claimed a decree by virtue of Section 43 of the Negotiable Instruments Act. It was held that the transfer by means of sale deed, and without any endorsement of a promissory note payable to order is not a "negotiation" thereof, nor is the transferee a "holder" thereof within the meaning of Section 8 of the Negotiable Instruments Act, and, therefore, such transferee is not entitled to the rights conferred on a holder for consideration by Section 43 of the Act. Sections 14, 15 and 48 show that the "holder" in Section 8 is a person to whom there has been negotiation by endorsement and delivery in the case of an instrument payable to order, and not a person who has merely acquired rights under a sale deed. *Jung Bahadur Singh* v. *Chander Bali Singh* (1939), All. 419.

The consideration given for a negotiable instrument must be a lawful consideration. If the consideration for a bill or note be unlawful, the instrument cannot be enforced, either between the original or even between the remote parties, unless the holder is a holder in due course, or a person deriving title from such holder without himself being party to any fraud or illegality affecting the instrument. *Perosha Cursetji* v. *Maneckji Dossabhoy*, 22 Bom. 899, 902. Where, however, the drawer of a bill transfers it to a holder for an unlawful consideration, any subsequent holder, who is not aware of the taint affecting the instrument, becomes a holder in due course of it and can sue the drawer upon it. *Doulatram* v. *Nagindas*, 15 Bom. L.R. 333.

A promissory note is enforceable against all the executants thereof, for consideration paid to one of several joint executants is legally sufficient to support the promise of all the joint executants, and it is not necessary that consideration should move to each executant separately to make the note binding on that executant. *Anant* v. *Saraswatibai*, 30 Bom. L.R. 709; *Sornalinga Mudali* v. *Pachai Maichan*, 38 Mad. 680; *Fanindra Narain Roy* v. *Kacheman Bibi*, 45 Cal. 774.

Exception I: Accommodation bills.—Many bills are drawn, accepted, and indorsed without any consideration, the various parties signing the bill for the purpose of lending their names to oblige their friends. Such bills are called "accommodation bills," and the persons who draw, accept and indorse them are called "accommodation parties". *Parr* v. *Jewell* (1855), 16 C.B. 684; *Smith* v. *Knox* (1800), 3 Esp. 46. An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. An accommodation party is liable on the bill to a holder for value, and it is immaterial whether, when such holder took the bill, he knew such party to be an accommoda-

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tion party or not. Bills of Exchange Act, S. 28; *Mills* v. *Barber* (1836), 1 M. & W. 425; *Bank of Ireland* v. *Beresford* (1818), 6 Dowl. 233, 237. An accommodation party stands in the position of a surety for the party accommodated, notwithstanding the fact that his ostensible position on the instrument is that of a principal debtor. (See Ss. 32, 37, 38). The party accommodated, by asking another to lend his name, thereby engages either himself to take up the bill, or to provide the accommodation party with funds for so doing, or lastly, to indemnify the accommodation party against the consequences of non-acceptance. *Reynolds* v. *Doyle* (1840), 1 M. & Gr. 753; *Nand Ram* v. *Sitta Prasad*, 5 All. 484. This being the relation subsisting between the parties, Exception I to the section says that where an accommodated party pays the amount due under an instrument, he cannot recover that amount from the person who lent his name to the instrument for his accommodation. But Exception I does not in any way affect the rule laid down in the section. An accommodation party, for instance, is liable on the bill to a holder for value in the same way as any ordinary party who has put his signature on the bill, and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not. The defence of want of consideration between accommodating and accommodated parties will not avail against a holder for value. Though the plea of accommodation can be set up against the party accommodated, yet the parties are liable to a holder for value in the characters in which their names appear on the instrument. The only proviso to Exception I is that where the holder himself is the party accommodated, he may not, by merely giving value to a prior party claim the benefit of the rule stated in this section as against the party who accommodated him. But where the rights of the *bona fide* holders are not involved, this section allows the defendant to raise the plea that he did not receive any consideration. *Sesha Aiyer* v. *Mangal Doss*, 20 M.L.J. 20.

Illustrations

(1) *H* is the payee and holder of a bill drawn by *B*. The bill is accepted by *A* for the accommodation of *H*. *H* cannot by merely giving value to *B*, the drawer, claim the benefit of the rule mentioned in the section as against *A*, the acceptor. The case falls under Exception I, and *H* cannot sue *A*.

(2) A bill is drawn and accepted for the accommodation of *P*, the payee. *P* indorses it away. The bill is dishonoured and *P* pays the amount of the bill. *P* cannot sue the drawer or acceptor. *Mills* v *Barber* (1836), 1 M & W. 425.

Exception II.—(See Notes to S. 44).

Section 44.]

Partial absence or failure of money consideration.

44. When the consideration for which a person signed a promissory note, bill of exchange or cheque, consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionately reduced.

Explanation.— The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange, or cheque stands in immediate relation with the payee, and the indorser with the indorsee. Other signers may by agreement stand in immediate relation with a holder.

Illustration

A draws a bill on *B* for Rs 500 payable to the order of *A*. *B* accepts the bill, but subsequently dishonours it by non-payment. *A* sues *B* on the bill, *B* proves that it was accepted for value as to Rs 400, and as an accommodation to the Plaintiff as to the residue. *A* can only recover Rs. 400. [See *Darnell* v. *Williams* (1817), 2 Stark 166.]

NOTES

Partial absence or partial failure of money consideration.— Section 44 deals with the effect of parial absence or partial failure of money consideration for a negotiable instrument on the rights of the parties thereto. The section lays down that where the consideration for which a negotiable instrument is signed consists of (1) money, and (2) the consideration is absent in part or subsequently fails in part, the amount which a holder standing in *immediate* relation with the signer is entitled to recover from him is the amount actually paid, and not the consideration for which the instrument was signed. Accordingly, where the consideration for a negotiable instrument consists of money, its partial failure or absence is a defence *pro tanto* against an immediate party. But in order to succeed on such a defence it is necessary that the consideration should consist of *money*, and that this defence could be urged only against an *immediate party*, or a party who has agreed to stand in immediate relation with the signer. Neither a holder for value, nor a holder in due course is affected by the partial absence or partial failure of consideration where the instrument is transferred by the signer to such a holder.

Illustrations

(1) A bill for Rs. 500 is accepted by *C* for the accommodation of the drawer, *B* advances Rs. 250 on the bill. *B* can only recover Rs. 250.

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(2) *A* owes *B* Rs 500. *B* draws a bill on *A* for Rs. 1,000. *A* to accommodate *B*, and at his request, accepts it. If *B* sues *A* on the bill he can only recover Rs. 500.

Explanation: Immediate parties.—The explanation gives examples of parties standing in immediate relation. "Immediate" parties are parties in direct relation with each other. All other parties are said to be "remote." *Prima facie* the drawer and the acceptor, the drawer of a bill and the payee, the indorser and his indorsee, the maker of a promissory note and the payee, and the drawer of a cheque and the payee, are in direct relation. In addition to these the explanation points out that other signers may by agreement stand in immediate relation with the holder. Thus, if a bill is drawn and accepted for the accommodation of the payee, the acceptor would then stand in direct relation to the payee.

Partial failure of consideration not consisting of money.

45. Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

NOTES

Partial failure of consideration not consisting of money.—This section deals with partial failure of consideration where the consideration does not consist of money. The section lays down the rule that a partial failure of consideration is a good *pro tanto* defence against an *immediate party*, provided that the part of the consideration which has failed, though it does not consist of money, can be ascertained in terms of a liquidated sum of money. *Barber* v. *Backhouse* (1791), 1 Peake 86; *Day* v. *Nix* (1824), 9 Moore. C.P. 159; *Forman* v. *Wright* (1851), 11 C.B. 481. Further, the part of the consideration which has failed must be ascertainable without any collateral inquiry. A partial failure of consideration for a negotiable instrument constitutes no ground of defence against an immediate party, if the *quantum* to be deducted on that account is a matter not of definite computation, but of unliquidated damages. If in order to ascertain the value of the consideration that has failed, it becomes necessary to go into a collateral inquiry, this section does not apply, and the holder will be entitled to recover the whole amount of the bill. Where in order to ascertain the value of the part consideration a collateral inquiry becomes necessary, the holder is entitled to recover the whole amount on the instrument, leaving the

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aggrieved party to a claim for damages. Again, as in section 44, the operation of the rule contained in section 45, is strictly confined to immediate parties only, and does not affect the rights of a holder for value or of a holder in due course.

Illustrations

(1) *A* agrees to supply a quantity of paper to *B*. *B* accepts a bill for Rs. 1,000 drawn by *A*, being the price of the paper. The paper is delivered to *B*, but it turns out to be not of the quality stipulated for and is worth Rs. 500 only. *B* retains the paper. If *A* sues *B* on the bill, *B* cannot set up as a *pro tanto* defence that the paper is only worth Rs. 500. As the failure of consideration cannot be ascertained without a collateral inquiry, *B* will have to pay Rs. 1,000 to *A*.

(2) *A* accepts a bill for Rs. 1,000. This is the agreed price of two bales of cotton to be supplied by *B* to *A*. *B* only delivers one bale to *A*. *B* sues *A* on the bill. *A* can set up the defence of partial failure of consideration, and *B* can only recover Rs. 500. *Agra & Masterman Bank* v. *Leighton* (1866), L.R. 2 Ex. 56, 64, 66.

(3) *A* accepts a bill for Rs. 1,000. This is the agreed price of two bales of cotton to be supplied by *B* to *A*. *B* only delivers one bale. *B* indorses this bill to *C* for value. *C* indorses it to *D* for value. If *D* sues *A* on the bill he is entitled to recover Rs. 1,000.

Holder's right to duplicate of lost bill.

45-A. Where a bill of exchange has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor giving security to the drawer, if required, to indemnify him, against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.

NOTES

Title to lost bills and notes. Rights and duties of the owner of a lost bill or note :—

(1) When a bill or note is lost, the finder acquires no title to it as against the rightful owner, nor is he entitled to sue the acceptor or maker in order to enforce payment on it. The title of the true owner is not affected by the loss of the instrument, and he is entitled to recover it from the finder. *Lowell* v. *Martin* (1813), 4 Taunt. 799.

(2) If the finder obtains payment on a lost bill or note, the person who pays it in *due course*, gets a valid discharge for it. But the true owner can recover the money due on the instrument as damages from the finder. *Burn* v. *Morris* (1834), 2 Cr. & M. 579.

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(3) If the finder of a lost bill or note, which is payable to bearer or which is indorsed in blank and is therefore transferable by mere delivery, negotiates it to a *bona fide* transferee for value, the latter acquires a valid title to it, and is entitled both to retain the instrument as against the rightful owner, and to compel payment from the parties liable thereon.

(4) If the finder of a lost bill or note, which is payable to order and is therefore transferable by indorsement and delivery, forges the indorsement of the loser and negotiates it to a *bona fide* transferee for value, the latter acquires no legal title to it, for a forgery can confer no title ; and a payment by the acceptor or other party liable to a person claiming under a forged indorsement, even though made in good faith, will not exonerate him.

(5) It is advisable that the owner of a lost bill should give notice of the loss to the parties liable on the bill for they will thereby be prevented from taking it up without proper inquiry. Public advertisement of the loss should also be given.

(6) The party who has lost a bill must make an application to the drawee for payment at the time it is due, and give notice of dishonour to all the parties liable, otherwise he will lose his remedy against the drawer and indorsers.

(7) Under this section the loser can apply for a duplicate of a lost bill.

Holder's right to duplicate of lost bill.—This section gives a statutory remedy to the owner of a lost bill. It says that the owner of a lost bill may, if the bill is lost before maturity, apply to the drawer to give him a duplicate bill, giving him security, if required, to indemnify him against all persons in case the bill is found. But the drawer is not bound to give a duplicate of a lost bill, until the holder guarantees him against any future demand, and the holder of a lost bill cannot claim payment on it if the original has been duly paid. *Indur Chandra Dugar* v. *Lachmi Bibi*, 15 W.R. 501. If the drawer on tender of indemnity declines to give a new bill, an action would lie to compel him to do so, and damages might be claimed in the alternative. *King* v. *Zimmerman* (1871), L.R. 6 C.P. 466. In the application of this section, the following points may be noted :—

(1) The section is confined in its operation to *bills* only, it does not apply to notes.

(2) The section applies to bills *before they are overdue.*

(3) The remedy given to the owner of the lost bill is against the *drawer* alone. The loser may compel the drawer to give him

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a duplicate bill upon an undertaking of indemnity, but no provision is made as to obtaining a fresh acceptance or fresh indorsements.

(4) Under this section it is only the *holder* of a lost bill that can apply for a duplicate. Therefore, if a bill is payable to order and is transferred for value but *without indorsement*, the transferee, if he loses the bill, cannot apply for a duplicate in his own name, for he is not a *holder*, that is, a person entitled in his own name to the possession of the bill. *Good* v. *Walker* (1892), 61 L.J.Q.B. 736; *Kaminee Debia* v. *Radha Sham Koondoo*, 18 W.R. 58.

CHAPTER IV

OF NEGOTIATION

Delivery.

46. The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorized by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

NOTES

Delivery necessary to complete contracts on negotiable instruments.—Just as a deed is of no legal effect until it has been delivered, so a negotiable instrument does not effectually bind any of the parties to it till delivered. Every contract on a bill, whether it be the drawer's, acceptor's, or an indorser's, is incomplete and revo-

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cable until delivery of the instrument in order to give effect thereto. (Bills of Exchange Act, Section 21). Till delivery the instrument is not clothed with the essential characteristics of a negotiable instrument. *Chapman* v. *Coterell*, 34 L.J. Ex. 186. "To constitute a contract," says Bovill, C. J. in *Abrey* v. *Crux* (1869), L.R. 5 C.P. 42, "there must be a delivery over of the instrument by the drawer or the indorser for a good consideration, and as soon as these circumstances take place, the contract is complete, and it becomes a contract in writing". In order to make the property in an instrument pass, it is not sufficient to endorse it, because mere signature does not make a contract. It must, further, be delivered to the indorsee or the agent of the indorsee. There is a clear distinction between the signing of a negotiable instrument and delivering it to the payee. "A person may sign a promissory note or a negotiable instrument in his own house and keep it there without incurring any obligation to any one at all. When such a document is tendered to the payee and accepted by him, there arises a contract between the parties. The signature on a negotiable instrument becomes necessary because of the provisions of section 4 of the Negotiable Instrument Act. It is only a preparation. It does not amount to an offer, and, therefore, does not become any part of the contract". Per Kania J. in *Damji Hirji* v. *Mahomedali*, 41 B.L.R. 959, at p. 963.

"In order to make property in bills pass, it is not sufficient to indorse them. They must be delivered to the indorsee or to the agent of the indorsee. If the indorser delivers them to his own agent, he can recover them, if to the agent of the indorsee, he cannot recover them". Per Mellish, L.J. in *Ex Parte Cote* (1873), L.R. 9 Ch. 27. Further, it is essential to delivery that it should be made with the *intention* of passing the property in the instrument to the person to whom it is delivered. The contract on a negotiable instrument until delivery remains incomplete and revocable. *Bhawanji* v. *Devji Punja*, 19 Bom. 635. Under the Act, delivery is as essential to complete the acceptance of a bill as it is necessary to complete the making, or indorsement of a bill, note or cheque. But by section 7 of the Act, the drawee is given the option to complete the contract of acceptance on a bill by giving notice of his having signed the bill to the holder or any person on his behalf. But such communication of acceptance may be made either to the holder of the instrument at the time, or to some party liable on the instrument, for it enures for the benefit of all parties. *Pragdas* v. *Daulatram*, 11 Bom. 257, 270. But where the drawee after writing the acceptance gives notice to, or according to the directions of, the person entitled to the instrument, there is a constructive

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delivery thereof, and the contract of acceptance becomes complete and irrevocable. *Cox* **v.** *Troy* **(1882), 4 B. & Ald. 474.**

Illustrations

(1) *A* owes *B* Rs. 1,000. *A* makes a promissory note for the amount payable to *B*. *A* dies, and the note is afterwards found among his papers. *B* has no right to this note, and cannot sue on it if delivered to him. *Bromage* v. *Lloyd* (1847), 1 Exch. 32.

(2) *A*, a drawee, receives a bill from *B*, the holder, and writes his acceptance on it. *A* afterwards hears that the drawer has become bankrupt. *A* cancels his acceptance and returns the dishonoured bill to *B*. This is no acceptance, as *A* never delivered the bill so as to make himself liable upon it. *Bank of Van Diemen's Land* v. *Bank of Victoria* (1871), L.R. 3 P.C. 526.

(3) *A* owes money to *B*. *A* makes a promissory note for the amount in favour of *B*. For safety of transmission he cuts the note in half and posts one-half to *B*. Before posting the other half he changes his mind, and writes to *B* demanding the half he has sent. He is entitled to do so, for a partial and inchoate delivery is ineffectual to pass property in the entire note. *Smith* v. *Mundy* (1160), 29 L.J.Q.B. 172.

(4) *H*, the holder of a bill, specially indorses it to *A*, and puts it in a letter addressed to *A*. The letter is put in the office letter-box, from whence it is stolen. *A*'s indorsement on the bill is forged, and is negotiated. The property in the bill remains in *H*. *Arnold* v. *Cheque Bank* (1876), 1 C.P.D. 578, 584, 592.

(5) *A* makes a promissory note in favour of *B*, and places it in the hands of his agent for delivery. This does not invest *B* with any right to the note. *A* may subsequently revoke the note before it is delivered. *Brind* v. *Hampshire* (1836), 1 M. & W. 365.

(6) *A* makes a note in favour of *B* and delivers it to a stakeholder. *B* acquires no property in the note. *Latter* v. *White* (1872), L.R. 5 H.L. 578.

(7) Plaintiff held a hundi which was drawn upon defendant No. 1 He indorsed it in favour of defendant No. 3, in satisfaction of his indebtedness and forwarded it to him by post. The hundi failed to reach defendant No. 3, but got into the hands of a stranger from whom it passed to defendant No. 2. It bore two forged indorsements, one purporting to be from defendant No. 3 to one *L*, and the other from *L* to defendant No. 2. Defendant No. 2 presented the hundi to defendant No. 1 and obtained payment from him. Defendant No. 3 apprised the plaintiff of the loss of the hundi and obtained a duplicate of it. The duplicate hundi was presented to defendant No. 1, who refused to pay twice over. Defendant No. 3 sued plaintiff on his claim and got payment. The plaintiffs then sued the defendants to recover the amount due on the hundi. *Held*, that defendant No. 1 having paid the amount of the hundi to a wrong person, who held under a forged indorsement, remained liable to the true owner for the amount of the hundi, that defendant No. 1 also was similarly liable for he having come into possession of the hundi through forged indorsements took no property in it, and the proceeds of the hundi received by him were the moneys of the true owner; that the true owner of the hundi at the date of the suit was the plaintiff, and not defendant No. 3, since to pass property in a hundi *it should not only be indorsed, but delivered to the indorsee*. There was no delivery of the hundi in this case to defendant No. 3. *Thorappa* v. *Umedmalji*, 25 Bom. L.R. 604.

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Delivery actual or constructive.—Delivery means transfer of possession, actual or constructive, from one person to another. According to the section, delivery may be actual or constructive. Actual delivery consists in the physical act of handing over the instrument by one person to another or to his agent on his behalf. *Adams* v. *Jones* (1840), 12 A. & E. 455. A change of actual possession is necessary to actual delivery. [See Illustration (*a*), S. 47]. But in the case of constructive delivery, delivery takes place without change of actual or physical possession. A person is said to have constructive possession of a thing when it is in the actual possession of his agent, clerk or servant on his behalf. [See Illustration (*b*), S. 47]. A bill or note may, therefore, be delivered without change of actual or physical possession. The following are cases of constructive delivery of an instrument :—

Illustrations

(1) *A* holds a bill on his own account *A* subsequently indorses it in favour of *B*, and holds it as *B*'s agent

(2) *A* holds a bill as *B*'s agent *A* subsequently attorns to *C*, and holds it as *C*'s agent

(3) *A* holds a bill as *B*'s agent *A* subsequently holds it on his own account

Delivery conditional or for special purpose.—Where an instrument is delivered conditionally, or for a special purpose, the section allows oral evidence to be adduced between immediate parties and a holder, other than a holder in due course, to show that the delivery was so made, and not for the purpose of transferring the property in it. Oral evidence is allowed in such cases not for the purpose of varying the terms of the written contract, but to show that the writing does not really represent the contract between the parties. Where a bill is delivered conditionally or for a special purpose, the relations between the person who so delivers it and the person to whom it is delivered are substantially those of principal and agent. *Marguire* v. *Dodds* (1859), 9 Ir. Ch. 452. Delivery of an instrument for a specified purpose, and on condition that it shall be returned if not applied for that purpose, constitutes the holder a mere bailee, trustee or agent with a limited title and power of negotiating it. Any subsequent holder with notice of the specific purpose or condition must apply the instrument accordingly. *Rajroopram* v. *Buddoo*, 1 Hyde 155. When a bill or note is delivered conditionally or for a special purpose, the liability of the person delivering it does not commence till the condition has been fulfilled, or the purpose has been satisfied. If the condition is not fulfilled or the purpose is not satisfied, the true owner is entitled to get

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back the instrument from the person to whom it was so delivered or from any one who has taken it with notice of the fact. The section says that the pleas of conditional delivery or delivery for a special purpose are available against immediate parties, and also against remote parties, who take it with notice of the condition or special purpose or other defect in the title. But these pleas may not be set up against a holder in due course, for, if a bill is delivered conditionally or for a special purpose and is negotiated to a holder in due course, a valid delivery of it is conclusively presumed, and he acquires a good title to it.

Illustrations

(1) *A* makes a note in favour of *B*, his servant, and hands it to his wife to deliver it to *B*, if *B* continues in *A*'s service till *A*'s death. *A* dies and his wife delivers the note to *B*. *B* remained in *A*'s service till *A*'s death. *B* can recover the amount of the note from *A*'s estate. *Re Richards* (1887), 36 Ch. D. 541.

(2) *A*, the holder of a bill, indorses it in blank and hands it to *B*, on the condition that he should forthwith restore certain bills. *B* does not do so. *B* cannot sue *A* on the bill, and if he sues *A*, *A* can set up the breach of condition.

(3) *A*, the holder of a bill, indorses it "*B* or order" for the express purpose that *B* may get it discounted. *B* does not do so and negotiates the bill to *C*. If *C* takes the bill *bona fide* and for value, that is, if *C* is a holder in due course, *C* acquires a good title to the bill and can sue all the parties on it.

(As to paragraphs 4 and 5 of this section, see Notes to Ss. 47 and 48).

Negotiation by delivery.

47. Subject to the provisions of Section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Exception.— A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

Illustrations

(*a*) *A*, the holder of a negotiable instrument payable to bearer, delivers it to *B*'s agent to keep for *B*. The instrument has been negotiated.

(*b*) *A*, the holder of a negotiable instrument payable to bearer, which is in the hands of *A*'s banker who is at the time the banker of *B*, directs the banker to transfer the instrument to *B*'s credit in the banker' account with *B*. The banker does so, and accordingly now possesses the instrument as *B*'s agent. The instrument has been negotiated, and *B* has become the holder of it.

NOTES

Negotiation by delivery.—The expression, an "instrument payable to bearer," means an instrument which is expressed to be so

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payable or on which the only or last indorsement is an indorsement in blank. (See S. 13, Expl. II.) Where an instrument, therefore, payable to bearer, is to be transferred to any person so as to constitute that person the holder thereof, the only thing this section requires to do is merely to deliver it to such person. In case of an instrument payable to bearer transfer by delivery without indorsement is sufficient to constitute the transferee the holder of the instrument. Where an instrument is negotiated by mere delivery, the transferor does not put his signature on the instrument, and therefore there is no privity of contract between the transferor and any subsequent transferee, and he is not liable *on the instrument* either to an immediate party or to any subsequent holder in case the instrument is dishonoured at maturity. A transferor, by not indorsing the instrument, exonerates himself from liability thereon as an indorser. When a transfer of an instrument takes place without an indorsement, the transaction is deemed to be in the nature of a *sale* of the instrument. Where the transfer is by delivery, the transferee has no right of recovery against the transferor *upon the instrument,* nor can he get back the amount paid by him to the transferor *on the failure of consideration.* For, "It is extremely clear that if the holder of a bill sent it to market without indorsing his name upon it, neither morality nor the law of this country will compel him to refund the money for which he sold it, if he did not know at the time he sold it that it was not a good bill." Per Lord Kenyon in *Fydell* v. *Clark* (1796), 1 Esp. 447. See also, *Fenn* v. *Harrison,* 3 T.R. 757. But if a person sells a bill for a valuable consideration being fully aware that it was of no value, and the purchaser is not aware of this fact, the seller will be bound to refund the price he received for it. For, "if he knew the bill to be bad, it would be like sending a counterfeit coin for circulation to impose upon the world instead of the current coin." Per Lord Kenyon in *Read* v. *Hutchinson* (1813), 3 Camp. 352.

Exception.—Section 46 deals with the making, accepting and indorsement of a negotiable instrument completed by delivery thereof, and provides for the case of conditional delivery or delivery for a special purpose. The general provision, however, as to conditional delivery or delivery for a special purpose contained in section 46 cannot apply to this section. Under this section the negotiation is by *mere delivery* and there is no question of indorsement. Hence the necessity of a separate exception to this section. The exception says that where a negotiable instrument payable to bearer is delivered on a condition that it is not to take effect except on the fulfilment of the condition then such an instrument is not negotiable, and no person

Sections 47-49.]

taking it with a knowledge of the condition can acquire a title to it, nor can he sue on it any prior parties until the condition has been fulfilled or the event has happened. But this exception does not apply to a holder for value without notice of the condition, who acquires a good title to the instrument and can enforce payment on it against any party thereto.

Negotiation by indorsement.

48. Subject to the provisions of Section 58, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof.

NOTES

This section has been amended by the Negotiable Instruments (Amendment) Act VIII of 1919. Section 4 of the Amending Act substituted the words "payable to order" for the words "payable to the order of a specified person, or to a specified person or order," which existed in the Negotiable Instruments Act of 1881.

Negotiation by indorsement.—This section deals with the negotiation of instruments payable to order, and declares that such instruments are negotiable by an indorsement of the holder completed by delivery. In order that a transferee of an instrument payable to order may acquire the rights of a holder in due course it is necessary that the instrument must be negotiated in the manner prescribed by this section. If, however, the holder transfers by simple delivery an instrument payable to order without indorsing it, the transferee merely acquires the rights of an assignee of an ordinary chose in action, and does not get any of the advantages of negotiability, for the instrument not being indorsed, it merely *assigned and not negotiated.*

Illustrations

(1) *A* is the holder of a bill payable to "*A* or order." *A* writes his indorsement on the bill and transfers it for value to *B*. *B* becomes a holder in due course.

(2) *A* is the holder of a bill payable to "*A* or order." *A* by simple delivery transfers the bill without indorsing it to *B*. *B* is not a holder in due course, but is a mere assignee of a chose in action and takes the bill subject to all defects.

Conversion of indorsement in blank into indorsement in full.

49. The holder of a negotiable instrument indorsed in blank may without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

NOTES

Conversion of indorsement in blank into indorsement in full.—This section provides that any holder of a bill indorsed in blank may convert the indorsement in blank into an indorsement in full, by writing above the indorser's signature a direction to pay the instrument to another person or his order. The advantage of such a course is that the holder, though he transfers the instrument, does not incur the responsibility of an indorser. *Hirschfeld* v. *Smith* (1866), L.R. 1 C.P. 340.

Illustration

A is the holder of a bill indorsed by *B*, in blank. *A* writes over *B*'s signature the words "pay to *C* or order." *A* is not liable as an indorser, but the writing operates as an indorsement in full from *B* to *C*. *Vincent* v. *Horlock* (1808), 1 Camp. 442.

Effect of indorsement.

50. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation ; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser or for some other specified person.

Illustrations

B signs the following indorsements on different negotiable instruments payable to bearer:—

(*a*) "Pay the contents to *C* only"

(*b*) "Pay *C* for my use."

(*c*) "Pay *C* or order for the account of *B*."

(*d*) "The within must be credited to *C*."

These indorsements exclude the right of further negotiation by *C*.

(*e*) "Pay *C*."

(*f*) "Pay *C* value in account with the Oriental Bank."

(*g*) "Pay the contents to *C*, being part of the consideration in a certain deed of assignment executed by *C* to the indorser and others."

These indorsements do not exclude the right of further negotiation by *C*.

NOTES

Effect of indorsement.—This section must be read subject to the provisions of section 46, as to conditional delivery, and must be supplemented by section 52, which recognises conditional indorsement. The first part of the section explains the effect of an indorse-

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ment which may be thus stated : An unconditional indorsement of a negotiable instrument followed by an unconditional delivery thereof transfers to the indorsee the property therein, vests in him the right of action against all parties whose names appear on the instrument, and gives him a right of further negotiating the instrument to any one he pleases. But such a transfer by an indorsement vests in the indorsee a right to sue only the parties whose names appear on the bill, and the indorsement does not entitle him to sue third parties on the original consideration. *Shanmuganatha Chettiar* v. *Srinivasa Aiyar*, 31 M.L.J. 138, 145, 146. The indorsee of a promissory note executed by the managing member of a joint Hindu family is limited to his remedy on the note, unless the indorsement is so worded as to transfer the debt as well, and the stamp law is complied with ; and, therefore, in the case of an ordinary indorsement the indorsee cannot sue the non-executant co-parceners on the ground of their liability under the Hindu law. *Maruthamuthu Naicker* v. *Kadir Badsha Routher* (1938), Mad. 568. This section has been held to apply also to instruments made payable in the first instance to bearer, and is by a subsequent indorsement made payable to order. Thus, where a hundi was drawn in favour of a payee or bearer and was indorsed by the payee to a named person, it was held that it ceased to be a bearer hundi and was payable only to the named person. *Forbes, Forbes, Campbell & Co.* v. *The Official Assignee, Bombay*, 27 Bom. L.R. 34.

Restrictive indorsement. Right of indorsee.—The second part of the section deals with the subject of what is called a " restrictive " indorsement. A restrictive indorsement is one which prohibits the further negotiation of the bill, or which expresses that it is a mere authority to deal with the bill as thereby directed, and not a transfer of the ownership thereof. No negotiation of a bill can take place if it contains words prohibiting its transfer. This restriction may be imposed after the bill has got into circulation by an indorser who indorses it restrictively. But when an indorsement is made with an intention of restricting or excluding the right of further negotiation, the section requires that the indorsement must contain *express* words to that effect. The mere omission to add words of negotiability to a special indorsement does not make it restrictive. Under the section the effect of a restrictive indorsement is :—

(1) to prohibit or exclude further negotiation, or

(2) to constitute the indorsee an agent to indorse the instrument, or to receive its contents for him, or

(3) to constitute the indorsee an agent to receive its contents for some other specified person.

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Where a bill is indorsed restrictively, the relations between the indorser and the indorsee are substantially those of principal and agent. A restrictive indorsement gives the indorsee the right to receive payment of the bill, and to sue any party thereto that his indorser could have sued, but he has no power to transfer his rights to any other person, unless he is expressly authorized to do so. The bill has, in fact, come to the end of its negotiability, and the last indorsee is the person who is to sue upon it. But where a restrictive indorsement authorizes further transfer, all subsequent indorsers take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.

Illustrations

(1) *A* indorses a bill thus: "Pay *B* or order for my use." *B* indorses it on his own account and discounts it with *C*. *C* receives the amount of the bill at maturity. *A* can recover the amount of the bill from *C*. *Lloyd* v. *Sigourney* (1829), 5 Bing. 525.

(2) *A* indorses a bill thus: "Pay *B* or order for account of *C*." *B* is *C*'s agent. *B* indorses the bill to *D*. *D* collects the bill at maturity. *C* can sue *D* for the amount so recovered. *Truetel* v. *Barandon* (1817), 8 Taunt. 100.

Who may negotiate.

51. Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in Section 50, indorse and negotiate the same.

Explanation.— Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

Illustration

A bill is drawn payable to *A* or order. *A* indorses it to *B*, the indorsement not containing the words "or order" or any equivalent words. *B* may negotiate the instrument.

NOTES

Who may negotiate.—Section 51 gives a list of persons who may indorse a negotiable instrument. These are the sole maker, drawer, payee or indorsee, or all of several makers, drawers, payees or indorsees. The case when a maker or a drawer has to indorse an instrument arises where the instrument is made or drawn payable to his own order, e.g. "pay to myself or order," or "pay to my order."

Sections 51-52.]

It must be noted that where the right to indorse is vested in several persons jointly, *all* of them must join in the indorsement. Again, where a bill or note is payable to the order of more payees or indorsees who are not partners, all must indorse, unless the one indorsing has been authorized to indorse for the others.

Illustrations

(1) A bill is "payable to the order of *A* and *B*." *A* alone indorses it to *C*. This is not sufficient. *C* cannot sue the acceptor. *Carvick* v. *Vickery* (1781), 2 Dougl. 652.

(2) A bill is payable "to the order of *A* and *B*." *A* with *B*'s previous authority indorses it to *C* thus: "For self and *B*." This is sufficient *C* can sue the acceptor.

(3) A bill is payable to "*A* and *B*, or the order of either of them." *A* alone indorses it. This is sufficient. *Watson* v. *Evans* (1863), 32 L.J. Ex. 137.

The section enumerates the persons who may indorse. Therefore, if a stranger indorses an instrument, he cannot be called an indorser, neither is he liable thereon as such.

Explanation.—The explanation requires that though a maker or a drawer may indorse or negotiate an instrument, he cannot do so unless he has come into the possession of the instrument in a lawful manner, or is a holder thereof. Further, the explanation requires that as regards a payee or an indorsee of an instrument, before he can indorse or negotiate it, he must be a holder thereof. A person, therefore, who steals or finds a lost instrument, cannot indorse and negotiate it, as he is not a holder within the meaning of the Act.

Indorser who excludes his own liability or makes it conditional.

52. The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

Illustrations

(*a*) The indorser of a negotiable instrument signs his name adding the words—"Without recource."

Upon this indorsement he incurs no liability.

(*b*) *A* is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement "without recourse" he transfers the instrument to *B*, and *B* indorses it to *C*, who indorses it to *A*. *A* is not only reinstated in his former rights, but has the rights of an indorsee against *B* and *C*.

NOTES

Conditional indorsement.—A drawer may not draw a bill conditionally (S. 5); and an acceptor at most can make his acceptance conditional (S. 86); but an indorser stands in this favourable position that he can either entirely exclude his liability as an indorser or make his liability *conditional.* The section gives power to an indorser to insert by express words in the indorsement a stipulation negativing or limiting his own liability to the holder. This can be achieved in any one of the three ways:—

(1) By excluding his liability, e.g. the holder of a bill may indorse it thus: "Pay *A* or order without recourse to me," or "Pay *A* or order *sans recourse*," or "Pay *A* or order at his own risk." In all these cases the holder does not incur any liability on the bill as an indorser.

(2) By making his *liability* depend upon the happening of a specified event which may never happen, e.g. the holder of a bill may indorse it thus: "Pay *A* or order on the arrival of the ship *Victory* at Bombay," or "Pay *A* or order on his marriage with *B*," or "Pay *A* or order on my election as director of *X* Company." In all these cases, the liability of the holder as an indorser arises only upon the happening of the events specified, and is extinguished if the events become impossible of performance, or the conditions specified are not fulfilled. In the latter case, the indorsee gets no title to the bill nor a right to sue the indorser. But the indorsee can sue the prior parties before the happening of the event.

(3) By making the *right* of an indorsee to receive the amount of the instrument depend upon the happening of a specified event, which may never happen. The difference between the second and the third case is this, that in the latter case the indorsee's right being dependent upon the happening of an event, he cannot sue prior parties before the happening of such event, whereas in the former case he could do so even before the happening of the event.

Negotiation back. "Taking up" of a bill.—The general rule is that the holder in due course of a negotiable instrument may sue all prior parties to the instrument. This rule is, however, subject to an exception the object of which is to prevent circuity of action. When a bill or note is *negotiated back* to a prior party, the prior party is remitted to his former position and comes within the definition of a "holder." But it is not necessary that the bill or note should be reindorsed to him. He may or may not cancel the indorsements in full subsequent to that which constituted him

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the holder, and may further negotiate the bill or maintain a suit against parties antecedent to him. Such a transaction is called "taking up" of the bill.

If the bill or note, however, is negotiated back to a prior party by a proper indorsement, the prior party in addition to his rights of a former holder acquires also the rights of a holder by virtue of the last indorsement, but he cannot enforce by a suit payment of the instrument against an intermediate party to whom he was previously liable by reason of his prior indorsement, for the law does not permit circuity of action.

Illustration

A, the holder of a bill, indorses it to *B*. *B* indorses it to *C*. *C* indorses it to *D*. *D* indorses it to *A*. *A* by his first indorsement is liable to *B*, *C* and *D*, and *B*, *C* and *D* are liable to *A* under the second indorsement. *A*, therefore, cannot sue *B*, *C* and *D* but *A* may by striking off the indorsements of *B*, *C* and *D*, again negotiate the bill.

But where an instrument is negotiated back to a prior party, the holder can enforce payment against *all intermediate parties* to whom the holder was *not* liable as a prior party, as for example, where the prior indorsement was "without recourse." This is the rule mentioned in the second clause of the section and illustration (*b*) to the section is to the same effect.

Holder deriving title from holder in due course.

53. A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

NOTES

Holder deriving title from a holder in due course.—The section says that a title that has been cleansed of defects by passing through the hands of a holder in due course remains immune from those defects, notwithstanding that a subsequent holder may have notice that defects once existed, provided he was not a party to them. *Guildford Trust* v. *Goss* (1926), 43 T.L.R. 167; *Kredit Bank* v. *Schenkecs* (1927), W.N. 39. The rule mentioned in this section, however, is subject to a qualification in England, and though the Negotiable Instruments Act is silent on the point, that qualification would undoubtedly be applied in India. The qualification is that the holder of an instrument with a derivative title from a holder in due course must not himself have been a party to any fraud or illegality affecting the instrument. If he were a party to such fraud or illegality he does not acquire the rights of a holder in due course.

Illustrations

(1) A bill, originally obtained by fraud from the drawer, gets into the hands of *A*, a holder in due course. *A* indorses the bill to *B* by way of gift. *B* can sue the acceptor for he stands on *A*'s title.

(2) *A*, by fraud, induces *B* to make a promissory note in his favour. *A* indorses the note to *C*, who takes it as a holder in due course. *C* subsequently indorses the note to *A* for value. *A* cannot sue *B* on the note.

The holder with a derivative title from a holder in due course stands in the shoes of that holder and can sue the acceptor, drawer, and all prior parties whom the holder himself could have sued. But it is not necessary that the holder with a derivative title should have given consideration for the instrument. *Subrao* v. *Sitaram*, 2 Bom. L.R. 891. Thus, a person to whom a holder in due course has transferred a bill for collection can maintain a suit upon the bill in his own name as he is a holder deriving title from the holder in due course and is competent to sue under this section. *Ardishir Moos* v. *Khushaldas Gokuldas*, 10 Bom. L.R. 268.

Instrument indorsed in blank.

54. Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

NOTES

Effect of indorsement in blank.—A negotiable instrument, though originally made or drawn payable to order, may be indorsed in blank and delivered to any person, and the effect of such an indorsement and delivery is to convert the instrument into one payable to bearer and transferable by mere delivery in the same manner as if the instrument were originally made or drawn payable to bearer. *Peacock* v. *Rhodes* (1781), 2 Doug. 633, 636.

Conversion of indorsement in blank into indorsement in full.

55. If a negotiable instrument after having been indorsed in blank is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

NOTES

Effect of an indorsement in blank followed by an indorsement in full.—The marginal note to the section, viz. " conversion of indorsement in blank into indorsement in full," is incorrect. This section does not, like section 49, deal with the conversion of a blank indorse-

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ment into an indorsement in full, but it only treats of the effect of an indorsement in blank followed by an indorsement in full. The rule stated in the section is this: If an indorsement in blank is followed by an indorsement in full, the instrument still remains payable to bearer and negotiable by delivery as against all parties *prior* to the indorser in full, though the indorser in full is only liable to a holder who made title directly through his indorsement, and persons deriving title through such holder. *Smith* v. *Clark* (1794), 1 Peake 295; *Walker* v. *Macdonald* (1848), 2 Ex. 527.

Illustration

A is the payee-holder of a bill. *A* indorses it in blank and delivers it to *B*. *B* indorses it in full to *C* or order. *C* without indorsement transfers the bill to *D*. *D* as the bearer is entitled to receive payment or to sue the drawer, acceptor, or *A* who indorsed the bill in blank, but he cannot sue *B* or *C*.

Indorsement for part of sum due.

56. No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument, but, where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.

NOTES

Partial indorsement.—The object of the section is to prevent an instrument being transferred for a portion only of the sum at the time due under it, because a personal contract cannot be apportioned. *Hawkins* v. *Cardy* (1699), 1 Ld. Raym 360. The indorsement must be the indorsement of the entire instrument. A partial indorsement, i.e. an indorsement which purports to transfer to the indorsee a part only of the amount payable, does not operate as a negotiation of the instrument. "Such an indorsement is not warranted by the custom of merchants and would be attended with this inconvenience to the prior parties, that it would subject them to a plurality of actions." (Byles, 18th. Edn., p. 154). In the same manner, an indorsement, which purports to transfer the instrument to two or more indorsees severally and not jointly, would come within the prohibition against partial indorsement though not expressly forbidden by this section.

Illustrations

(1) *A* is the holder of a bill for Rs. 1,000. *A* indorses it thus: "Pay *B* or order Rs. 500." This is a partial indorsement and invalid for the purpose of negotiation.

(2) *A* is the holder of a bill for Rs. 1,000. *A* indorses it thus: "Pay Rs. 500 to *B* or order, and Rs. 500 to *C* or order." Though the whole amount of the bill is transferred to *B* and *C* as each of them is an indorsee of only a part of the amount, the indorsement is partial and invalid for the purpose of negotiation.

The last part of the section says that if a bill has been paid in part, the fact of the part payment may be indorsed on the instrument, and it may then be negotiated for the residue, e.g. a bill may be indorsed thus: "Pay *A* or order Rs. 500 being the unpaid residue of the bill." Such an indorsement would be valid.

Legal representative cannot by delivery only negotiate instrument, indorsed by deceased.

57. The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

NOTES

Indorsement by legal representative.—A legal representative cannot complete an indorsement made by the deceased by merely delivering the instrument, for a legal representative is not the agent of the deceased.

Illustration

A is the holder of a bill. *A* specially indorses it to *B*, but dies before delivering it. *A*'s executor subsequently hands the bill to *B*. The indorsement is invalid and *B* cannot sue on the bill.

The instrument such as is described in this section can be negotiated by the legal representative only by re-indorsement and delivery. *Bromage* v. *Lloyd* (1847), 1 Ex. 32. But in re-indorsing the instrument, the legal representative should be careful to exclude his personal liability thereon. (See Ss. 29 and 32.)

Instrument obtained by unlawful means or for unlawful consideration.

58. When a negotiable instrument has been lost or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party, prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

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NOTES

Scope of the section.—This section deals with the rights acquired by negotiation, that is, transfer according to the rules of the law merchant. It recognises the paramount rights of a holder in due course, and thus constitutes the main difference between the negotiation of a bill or note and the transfer of any other chose in action. The section deals with two sets of circumstances. Firstly, the section deals with the legal position of a *possessor* or an *indorsee* of a negotiable instrument which has been lost, or which has been obtained from any maker, acceptor or holder by means of an offence, or fraud, or unlawful consideration. Secondly, the section deals with the position of a *holder in due course* under similar circumstances.

Lost instruments.—As to the rights and liabilities of the owner of a negotiable instrument which has been lost, see Notes to section 45-A. The question has been fully dealt with there.

Instruments obtained by means of an offence. Stolen instruments.—A person who has obtained a negotiable instrument by theft, cannot enforce payment of it against any party thereto nor can he retain it against the party from whom he so obtained it. If he negotiates the instrument to a purchaser, who gives value for it, but has notice of the fact that the instrument had been stolen, the transferee cannot acquire a better title than his transferor, and cannot enforce payment or retain the instrument as against the party from whom his transferor obtained it. But if a person, who has stolen a bill or note payable to bearer, transfers it to a holder in due course, he confers a good title on him or any person deriving title from such holder. In the case of a stolen instrument the thief does not acquire any title to it, and the proceeds of the bill may be followed in the hands of the thief or any volunteer from him. *Benque Belge* v. *Hambrouck* (1921), 1 K.B. 321 But if a stolen instrument is negotiated by delivery to a transferee for value without notice of the theft, the transferee acquires a good title to it not only against the thief, but also against any prior party to him. *Raphael* v. *Bank of England.* (1855), 17 C.B. 161; *Chichester* v. *Hill* (1882), 52 L.J.Q.B. 160.

Instruments obtained by fraud.—Fraud vitiates all agreements and transactions. "The law sets itself against fraud to the extent of breaking through almost every rule, sacrificing every maxim, getting rid of every ground of opposition which may be presented, so as to prevent it from succeeding." It is of the essence of all contracts, including those on negotiable instruments, that they must

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have been brought about by the free consent of parties competent to contract. Thus, if a person obtains an advance of money on a hundi, on untrue representations, knowing them to be untrue and knowing also that without them he could not have got the money, the lender is entitled to rescind the contract on the hundi and to sue at once for the recovery of the amounts advanced. *Baboo Lall* v. *Joy Lall,* 24 Cal. 533. If a negotiable instrument, therefore, was executed under coercion, or made or obtained by fraud, proof of such coercion or fraud is a good defence to an action on the instrument. So, if the maker or acceptor, when sued on an instrument, prove that it was obtained from him by fraud, the person defrauding is not entitled to recover anything. In the same manner any subsequent negotiation or transfer may be vitiated by fraud, and may be set up as a defence. An instrument given in fraud of a third person is as bad as one given in fraud of a party to the transaction. *Cockshott* v. *Bennett* (1788), 2 T.R. 733; *Byrant* v. *Christie* (1816), 1 Stark. 329. Under the section, the *possessor* or an *indorsee,* who claims through the person who obtained the instrument by means of fraud, cannot recover payment on it from any party thereto. But the defence of fraud cannot in general be set up against a holder in due course or a holder deriving title from such holder. If, however, it could be shown that a person without negligence on his part was induced to sign an instrument, it being represented to him to be a document of a different kind, he would not be liable even to a holder in due course. *Foster* v. *Mackinnon* (1869), K.R. 4 C.P. 704; *Lewis* v. *Clay* (1898), 67 L.J.Q.B. 224; *Chimanram* v. *Diwanchand,* 56 Bom. 180.

Instruments obtained for an unlawful consideration.—If the consideration for a note, bill, or cheque is unlawful the instrument is void. Every agreement of which the object or consideration is unlawful is void. The general rules as to the legality of object or consideration of a contract apply to contracts on negotiable instruments, and a negotiable instrument given for a consideration which is illegal, or opposed to public policy, or immoral, or specially prohibited by statute, is void and creates no obligation between the parties thereto. (Indian Contract Act, Sec. 25). But a holder in due course obtains a good title to an instrument which was originally made or drawn or subsequently negotiated for an unlawful consideration.

Forged instruments.—Forgery is the fraudulent making or alteration of a writing to the prejudice of another man's right. The most common species of forgery is fraudulently writing the name of an existing person. It is, also, a forgery to sign the name of

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a fictitious or a non-existing person, intending it to be believed that the instrument was signed by a real person, if the signature be placed with a fraudulent or dishonest intention. A man's signature of his own name may amount to forgery, if it is put with the intention that the signature should pass for the signature of another person of the same name. The subject of forgery belongs to criminal law, and here it is intended to deal with the fraudulent placing on a bill of a signature whether of a drawer, acceptor or indorser, and the consequences arising thereunder. It has been pointed out as a general rule that all persons whose names appear on an instrument are primarily liable thereon. It is, therefore, of the utmost importance, that the greatest possible protection should be afforded when a man's name has been forged. The liability to loss through forgery should render the holder extremely cautious as to the identity of the transferor and the genuineness of his signature. As a general rule it may be stated that a forged signature is worthless as a foundation of title. Where a signature on a negotiable instrument has been forged the forged signature is wholly inoperative, and the property in the instrument remains in the person who was the holder at the time when the forged signature was placed on it. The holder of a forged instrument cannot enforce payment thereon nor can he give a valid discharge therefor. If, however, a holder does manage in spite of the forgery to obtain payment of the amount of the bill, he cannot retain the money. The true owner may compel the person who has paid the bill to deliver it up to him, and the debtor will be obliged to pay over again to the rightful holder. The true owner may sue in tort the person who is in receipt of the money for the conversion of his bill or for the money had and received to his use. A person who has paid money by mistake on a forged signature may recover it back from the person to whom he has paid it. (See S. 72, Indian Contract Act). This principle is of universal application, and a holder in due course is not exempt from it, for there is a great difference between a defect of title,—in which case a holder in due course is protected,—and an entire absence of title as in the case of forgery,—in which case he derives no title. But in order that this rule may operate, it is essential that the holder must have taken the instrument "*though or under*" the signature, that is, the signature must have been a necessary part of the instrument so as to pass the instrument from its last possessor to the holder. If, therefore, the signature of the drawer or acceptor of a bill has been forged, the forgery passes no title and in either of these cases the bill is entirely valueless.

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Illustrations

(1) On a note for Rs 1,000, *A* forges *B*'s signature to it as maker *C*, a holder, who takes it *bona fide* and for value acquires no title to the note

(2) On a bill for Rs 1,000, *A*'s acceptance to the bill is forged The bill comes into the hands of *B*, a *bona fide* holder for value. *B* acquires no title to the bill.

Forgery cannot be ratified for a forger does not act, and does not purport to act on behalf of the person whose signature he forges. But a person whose signature has been forged may, by his conduct, be *estopped* from denying its genuineness to an innocent holder.

Illustration

A's acceptance to a bill is forged *B*, a holder in due course, who takes the bill is informed that the signature is not *A*'s *B* writes to inquire and is informed by *A* that the signature is his *A* is liable on his acceptance

Forged indorsements.—The case is, however, different where an indorsement is forged. The answer depends entirely upon the question whether the instrument is indorsed in full or indorsed in blank. If an instrument is indorsed in full, the signature of the person to whom or to whose order the instrument is negotiated must be a genuine one, for a title to the instrument can only be made *through his indorsement*. If a bill or note, therefore, be negotiated by means of a forged indorsement, a person claiming *under that indorsement* though he be a purchaser for value and in good faith, cannot acquire the rights of a holder in due course. He acquires no title to the bill or note. *Mascarenhas* v. *Mercantile Bank of India*, 34 B.L.R. 1; *Mercantile Bank* v. *Caciro*, 30 Bom. L.R. 1222; *Mercantile Bank* v. *D'Silva*, 30 Bom. L.R. 1225. *Mercantile Bank of India* v. *Mascarenhas*, 32 B.L.R. 1210.

Illustrations

(1) A bill is indorsed, 'Pay John Brown or order" John Brown must indorse the bill, and if his signature is forged the bill is worthless

(2) A bill is payable to "*A* or order" It is stolen from *A* and the thief forges *A*'s indorsement and indorses it to *B* who takes it as a holder in due course *B* acquires no title to the bill, nor can he recover upon it, nor give a valid discharge for it

Section 58 of the Negotiable Instruments Act, which protects a holder in due course where a negotiable instrument has been obtained by means of an offence, does not apply to a case of forgery. Where a party primarily liable on a negotiable instrument pays the amount thereof to a wrong person, who holds it under a forged indorsement, he remains liable to the true owner. No holder of a negotiable instrument, though he may be a holder in due course, can acquire a title to the instrument through a forged indorsement. *Thorappa* v. *Umedmalji*, 25 Bom. L.R. 604.

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But different considerations arise where an instrument is indorsed in blank. In such a case when the instrument gets into the hands of any person, a transfer can be made by *simple delivery*, and it is immaterial as far as the holder is concerned, that he obtained it in good faith from the person in whose possession it was, and that such person indorsed the bill in any name whatever. Where an instrument is indorsed in blank, the holder does not derive his title *through the forged indorsement*, and he can sue any of the parties to the bill without taking the slightest notice of the forgery.

Illustration

A bill is indorsed. "Pay John Brown or order." John Brown indorses the bill in blank. It comes into the hands of *A*. *A* passes it by simple delivery to *B*. *B* forges *A*'s indorsement and transfers it to *C*. As *C*, the holder, does not derive his title through the forged indorsement of *A*, but through the indorsement of John Brown which is genuine, he can sue any of the parties to the bill without taking the slightest notice of *A*'s forged indorsement.

Banker's liability on a forged indorsement.—Where an acceptance is made payable at a banker's, the banker cannot debit his customer with a payment made on a forged indorsement. Bankers who undertake the duty of paying their customers' acceptance cannot do otherwise than pay off-hand. In paying their customers' acceptances in the usual way, bankers incur a risk perfectly understood and in practice disregarded. They have no recourse against their customer if they pay on a genuine bill to a person appearing to be the holder, but claiming through or under a forged indorsement. The bill is not discharged, the acceptor remains liable, the banker has simply thrown his money away, if he cannot recover from the person to whom he has paid it. *Bank of England* v. *Vagliano Bros.* (1891), A.C. 107. By section 85 a banker who pays a *cheque* where the indorsement of the original payee has been forged is protected. (See Notes to S. 85).

Privileges of a holder in due course.—The title of the holder in due course of a negotiable instrument is free from equities and other defences which could have been urged against prior parties. This special privilege is secured to him by means of certain rules and estoppels contained in the Indian Negotiable Instruments Act. These may be briefly summarized:—

(1) A person who has signed and delivered to another, a stamped but otherwise inchoate instrument, is precluded from asserting, as against a holder in due course, that the instrument has not been filed in accordance with the authority given by him, the stamp being sufficient to cover the amount. (S. 20).

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(2) Where a bill of exchange is drawn payable to the drawer's order in a fictitious name, and is indorsed by the same hand as the drawer's signature, the acceptor is not permitted to allege as against a holder in due course that such name was fictitious. (S. 42).

(3) If a bill or note is negotiated to a holder in due course, the other parties to the bill or note cannot avoid liability on the ground that the delivery of the instrument was conditional or for a special purpose only. (Ss. 46 & 47).

(4) The defences on the part of the person liable on a negotiable instrument that the instrument had been lost, or obtained from him by means of an offence or fraud or for an unlawful consideration cannot be set up against a holder in due course. (S. 58).

(5) No maker of a promissory note and no drawer of a bill of exchange or cheque and the acceptor of a bill of exchange for the honour of the drawer shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn. (S. 120).

(6) No maker of a promissory note and no acceptor of a bill of exchange payable to order shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity at the date of the note or bill to indorse the same. (S. 121).

Instrument acquired after dishonour or when overdue.

59. The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor:

Accommodation note or Bill.

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

Illustration

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but indorsed the bill to *A*. *A*'s title is subject to the same objection as the drawer's title.

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NOTES

Negotiation of dishonoured instruments.—As a general rule, the holder for value of a negotiable instrument is not affected by any defects in the title of his transferor. This rule is, however, subject to two qualifications: (1) when a holder acquires it with notice of dishonour, and (2) when he acquires it after maturity. This section lays down the consequences which follow the negotiation of (*a*) dishonoured instruments, and (*b*) overdue instruments.

Where a negotiable instrument has been dishonoured, any person who takes it with notice of dishonour takes it subject to any defect of title attaching thereto at the time of dishonour. The transferee of a dishonoured instrument, who takes it with notice of dishonour, cannot acquire a better title to it than that which his transferor had. Such a transferee is not a holder in due course, for by section 9 of the Act he must acquire the instrument "without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title." In the case of a dishonoured instrument the holder, when he knows that fact appearing on the bill, is put on inquiry about the title of his transferor.

Illustration

A bill is dishonoured by non-acceptance. The bill is indorsed to *A*. *A* indorses it to *B*. As between *A* and *B* the bill is subject to an agreement as to the discharge of *A*. The bill is afterwards indorsed to *C*, who takes it with notice of dishonour. *C* takes the bill subject to the agreement between *A* and *B*.

Overdue instruments.—A bill or note is not deemed to be overdue until the expiry of the day on which it falls due, and where days of grace are allowed it is only after the termination of the last days of grace that the instrument becomes overdue. There is nothing to prevent the transfer of an overdue instrument. The transferee, however, does not get the advantages of negotiability, for an instrument which is overdue and negotiated can only be negotiated subject to any defect of title affecting it at maturity, and no person to whom it is transferred can acquire or give a better title than that which the person from whom he took it had. A person who takes an overdue instrument cannot be a holder in due course, because section 9 of the Act requires that a holder in due course should acquire the instrument, "before the amount mentioned in it became payable." "After a bill or note is due it comes disgraced to the indorsee, and it is his duty to make inquiries, concerning it. If he takes it, though he gave full consideration for it, he takes it on the credit of the indorser, and subject to all the

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equities with which it may be encumbered." *Tinson* v. *Francis* (1807), 1 Camp. 19. The fact that maturity has passed is patent on the face of the instrument, and that fact gives notice to the holder that the instrument has either been paid or dishonoured. In fact, after maturity, the contract on the bill is *assignable*, though simply by indorsement, and the bill has ceased to be *negotiable* in the full sense of the term. A person, who takes an overdue instrument, must not take it blindly and expect to be treated as an innocent holder. If the transferee, without satisfying himself, takes an overdue instrument, he takes it at his own risk, and gets no better title than his transferor.

Where a negotiable instrument, therefore, has been dishonoured or has become overdue, it can only be negotiated subject to the equities which attach to that instrument. But the equities are the equities which exist at the time of transfer, and not those arising subsequently or even collaterally. *Harry Van Ingen* v. *Dhumna Lall Lallah*, 5 Mad. 108. The transferee takes such an instrument subject to all the inherent vices and defects with which it was tainted at the time of the transfer, e.g. fraud, coercion, illegal consideration. In like manner it might be shown that such an instrument was given for a special purpose, or on a certain condition.

Illustrations

(1) *A*, for an illegal consideration, makes a promissory note in favour of *B*. *B* indorses it when overdue to *C*. *C* gives full value for the note *C* cannot sue *A*, for *C* has no better title than *B*, the payee. *Amory* v. *Meeweather* (1824), 2 B. & C. 573.

(2) A bill is payable to the drawer's order. It is accepted by *B* for an illegal consideration. The drawer before its maturity indorses it to *C* who takes it for value and *bona fide*. *C* indorses the bill when overdue to *D* *D* acquires a good title and can sue all parties to the bill, for *C* had a good title and *D* acquired the title of his transferor. *Chalmers* v. *Lamon* (1808), 1 Camp. 383.

(3) A bill is obtained from the drawer for a special purpose. *A*, in fraud of that purpose, indorses the bill when overdue to *B*. *B* cannot recover from the acceptor. *Lloyd* v. *Howard* (1850), 15 Q B. 905.

Accommodation notes and bills.—The proviso lays down an exception to the rule laid down in the section as to the negotiation of an overdue bill. The rule mentioned in the section,—that the taking of an overdue instrument amounts to notice to the holder of the equities attaching to it,—does not apply to the case of accommodation notes and bills, and the holder of such notes and bills, even after maturity, may recover the amount from any prior party. The case of accommodation notes and bills is an exception to the general rule that the title of a person, who takes an instrument after matu-

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rity, is subject to all the defences which could be set up against the transferor. Where an accommodation note or bill is negotiated after maturity, the proviso says that a holder for consideration may recover thereon. The holder of an accommodation instrument *after maturity* is in the same position as a holder *before maturity*, provided he takes the instrument in good faith and for value.

Illustration

A bill is payable three months after date. It is accepted for the accommodation of the drawer. *After maturity* the drawer indorses it to *A* for value. *A* can recover from the acceptor.

Instrument negotiable till payment or satisfaction.

60. A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

NOTES

Duration of negotiability.—"A bill of exchange," says Lord Ellenborough, "is negotiable *ad infinitum* until it has been paid by, or discharged on behalf of, the acceptor." *Callow* v. *Lawrence* (1814), 3 M. & S. 97. An instrument negotiable in its origin continues to be negotiable until payment or satisfaction thereof by or on behalf of the acceptor or maker at or after maturity. If, however, an instrument is paid before maturity, the payment is not a payment in due course, and the instrument continues to be negotiable and is not discharged by such payment. If the acceptor or maker pays and takes up an instrument before maturity, he is not precluded from re-issuing it before maturity. *Morley* v. *Culverwell* (1840), 7 M. & W. 174, 182. Under the section, it is, however, necessary that the payment or satisfaction must have been made by or on behalf of the maker, drawee or acceptor at or after maturity, and not by any other person. In order to stop the negotiability of the instrument the party ultimately liable thereon must pay it.

CHAPTER V

OF PRESENTMENT

Presentment for acceptance.

61. A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled

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to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business-day. In default of such presentment, no party thereto is liable thereon to the person making such default.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place ; and, if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

Where authorized by agreement or usage, a presentment through the post-office by means of a registered letter is sufficient.

NOTES

Presentment for acceptance. Advantages of presentment.—There are two kinds of presentment, presentment for acceptance and presentment for payment. It is not in all cases necessary to present a bill of exchange for acceptance before presenting it for payment, e.g. bills payable on demand, bills payable a certain number of days after date, and bills payable on a day certain need not be presented for acceptance before presenting them for payment. It is the common practice to obtain the acceptance of the drawee as soon as possible after the bill is drawn. But such acceptance is not so absolutely necessary in order to constitute the bill a negotiable instrument. Even before acceptance all parties competent to contract, who have put their signatures on the bill, are liable on it. A person to whom the bill has been negotiated before acceptance may sue upon it as a holder in due course. *National Park Bank of New York* v. *Berggren & Co.* (1914), 110 L.T. 907. There are, however, two cases in which presentment for acceptance is necessary:—

(1) Where a bill is *payable after sight*, presentment for acceptance is necessary in order to fix the maturity of the instrument.

(2) Where a bill *expressly stipulates* that it shall be presented for acceptance, it must be presented for acceptance before it is presented for payment.

But even in cases where presentment is *optional*, it is always desirable to get a bill accepted as soon as possible, in order (i) to obtain the additional security of the acceptor's name on the bill, or (ii) to obtain an immediate right of recourse against the drawer and the other parties in case the bill is dishonoured by non-acceptance. It is also advantageous to the drawer, for if acceptance is

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refused, he may by receiving early notice of dishonour be better able to get his effects out of the drawee's hands.

Illustrations

(1) *A* draws on *B* a bill payable three months *after date* in favour of *C*. The bill is negotiated by *A* to *C*, and passes through several hands before it is presented to *B* for acceptance. Whether *B* accepts it or not, *A*, *C* and all other indorsers remain liable on it, if *B* fails to pay it on due date. If at any time before the expiry of the three months, the bill is presented to *B* and he refuses to accept, the holder gets an immediate right of action against all antecedent parties.

(2) *A* draws on *B* a bill payable three months *after sight*. The bill must be presented to *B* for acceptance for until he has seen it the maturity of the bill cannot be fixed. If *B* refuses to accept, the holder gets a right of action against all antecedent parties owing to the fact of dishonour.

Presentment to whom :—

(1) The presentment for acceptance must be made to the drawee or to his duly authorized agent. The holder must, however, make the demand for acceptance in clear and unequivocal terms. *Cheek* v. *Roper* (1804), 5 Esp. 175. Proof must be given to show that the person to whom presentment was made was the drawee himself, and the holder must endeavour to see the drawee personally. *Bateman* v. *Joseph* (1810), 12 East. 433; *Smith* v. *Bank of New South Wales* (1872), L.R. 4 P.C. 194, 208. The presentment for acceptance consists in actually exhibiting the bill by the holder to the drawee, and not in merely giving notice to him that a bill is in the possession of the holder. The drawee is also entitled to insist upon the production of the draft for acceptance so that he may see the same and decide whether he shall accept the same or not, and in case of its non-production may decline to accept it.

(2) Where there are several drawees, who are not partners, presentment must be made to all of them, unless one drawee has authority to accept for all, in which case presentment may be made to him only. The holder is entitled to have the acceptance of all the drawees, and if one of them refuses to accept, he is entitled to treat the bill as dishonoured.

(3) If the drawee be dead, presentment may be made to his legal representative. If the legal representative accepts the bill, he should take care to expressly limit his liability to the extent of the assets which come to his hands, otherwise he would make himself personally liable. (See Sections 29 and 75).

(4) If the drawee is bankrupt, presentment may be made to his assignee.

Presentment by whom.—Under the section, presentment for acceptance should be made by "some person entitled to demand

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acceptance." He is usually the holder, and the drawee may accept a bill even though the person presenting it is not the lawful holder thereof. By presenting the bill for acceptance, the holder does not give a guarantee as to the genuineness of the instrument or any documents attached thereto. *Guaranty Trust Co. of New York* v. *Hannay* (1918), 2 K.B. 623. If the person who presents a bill subsequently turns out not to be the legal holder thereof, the drawee's acceptance will enure for the benefit of the rightful owner. Presentment may also be made by some person duly authorised to procure acceptance on behalf of the holder.

Time for presenting.—All bills shall be presented before maturity. The following rules may be stated: (1) In the case of a bill which specifies the period for presentment, it must be presented within that period. (2) In the case of a bill of which presentment for acceptance is optional, it must, if presented for acceptance, be presented at any time before payment. (3) A bill payable after sight, must, if no time is specified therein for presentment, be presented within a "reasonable time" after it is drawn. Such a bill ought to be presented without unreasonable delay, for the longer the delay the greater the risk the drawer runs of the insolvency of the drawee. In determining what is reasonable time for presentment for acceptance, regard shall be had to the nature of the bill, the usage of trade with regard to similar instruments, and the distance between the place where the bill is drawn and the place where it is to be presented for acceptance, and the particular facts of the case. *Mellish* v. *Rawdon* (1832), 9 Bing. 416, 424, 425.

In all cases where presentment for acceptance is made, it must be made during business hours and on a business day.

Effect of non-presentment.—Where presentment for acceptance is necessary, the section says that in default of such presentment by the holder, the drawer and all the indorsers are discharged from liability to the holder making such default, and no action is maintainable even in respect of the debt or other consideration for which the bill was given. *Soward* v. *Palmer* (1818), 8 Taunt 277.

Presentment for acceptance when excused.—Where presentment for acceptance is *necessary*, presentment is excused and the bill may be treated as dishonoured in the following cases:—

(1) Where the drawee is a fictitious person or one incapable of contracting. (S. 91).

(2) Where the drawee cannot after reasonable search be found. (S. 61).

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(3) Where, though the presentment is irregular, acceptance has been refused on some other ground.

(4) Where the drawee becomes bankrupt or is dead. (S. 75).

Presentment of promissory note for sight.

62. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can, after reasonable search, be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business-day. In default of such presentment, no party thereto is liable thereon to the person making such default.

NOTES

Presentment for sight.—This section deals with the necessity of presentment for sight of notes payable a certain period after sight and the effect of non-presentment. The expression "after sight" means in a promissory note after presentment for sight. It means that payment is not to be demanded till the note has again been exhibited to the maker. (See notes to S. 21).

A promissory note payable at a certain period after sight is payable at that period after presentment for sight. *Sturdy* v. *Henderson* (1821), 4 B. & Ald. 592. When a promissory note is made payable at a certain period after sight it is necessary to present it for sight in order to fix the maturity of the instrument. The section says that if default is made in such presentment, all the antecedent parties are discharged from liability to the person making such default.

Drawee's time for deliberation

63. The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee forty-eight hours (exclusive of public holidays) to consider whether he will accept it.

NOTES

Drawee's time for deliberation.—By the Negotiable Instruments (Amendment) Act XII of 1921, Section 2, "forty-eight hours" were substituted for "twenty-four hours" appearing in the original Act. The principle laid down in this section seems to be of universal application. The drawee is entitled to demand forty-eight hours to consider whether he will accept the bill, and the holder who presents the bill for acceptance must allow him that time. At the expiration of the forty-eight hours the drawee must return the bill accepted or

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dishonoured. After forty-eight hours the holder should demand the re-delivery of the bill, and if the drawee does not return the bill duly accepted, the holder must treat the instrument as dishonoured. In counting the period of forty-eight hours, public holidays are to be excluded. *Bank of Van Diemen's Land* v. *Victoria Bank* (1871), L.R. 3 P.C. 526, 546.

If the drawee with whom the bill is left for acceptance destroys it, or does not return it to the holder, the latter may sue for the recovery of the bill or for damages. If, however, through the negligence of the holder, the bill is returned to a wrong person, the drawee is not liable to the holder. *Morrison* v. *Bachanan* (1833), 6 C. & P. 18.

Presentment for payment.

64. Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment the other parties thereto are not liable thereon to such holder.

Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

Exception.— Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

NOTES

Presentment for payment.—In the absence of an express stipulation requiring presentment, presentment for payment is not necessary to charge the maker of a note or the acceptor of a bill, for they are the principal debtors on these instruments. The reason of this rule is that by the common law a debtor is bound to seek out his creditor and pay him. *Walton* v. *Mascall* (1844), 13 M. & W. 452. Presentment of the note or the bill for payment is not a condition precedent to the liability of the maker or acceptor, and therefore presentment in general is not necessary in order to render them liable. No one, however, would be likely to sue the maker of a note or the acceptor of a bill without having first demanded payment from him. If he did he would probably be compelled to pay the costs of the action. But in order to charge the *other parties*, presentment is absolutely necessary, except in the cases mentioned in section 76. In default of presentment the section says that the parties other than the maker of a note, the acceptor of a bill and the drawee of a cheque, i.e. the drawers and the indorsers in case of bills and

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cheques, and the indorsers in case of promissory notes, are discharged from liability on the instrument to the holder making default. Under section 64 the result of non-presentment of hundis for payment is not the exemption of the acceptor from liability but the exemption of other parties to the hundi only. The word "other" has been used to show that there is a difference between section 64 and sections 61 and 62 where the words used are "no party." The section, therefore, means that the parties who are mentioned in the section may be liable but other parties to the instruments are not to be liable. The exception to section 64 cannot be read as controlling the plain language of the main section, but must be read as more or less as an independent rule of law. The acceptor of the hundi therefore remains liable under it in spite of the fact that it was not presented for payment. *Benares Bank, Ltd.* v. *Hormusji,* A.I.R. 1930, All. 648. Though the parties to a promissory note (payable three months after date), other than the maker, are discharged from their liability by reason of default in making presentment for payment, the maker is nevertheless liable except when the note is payable at a specified place. *Ghania Lal* v. *Karam Chand,* A.I.R. 1929, Lah. 240. The liability of the drawer and the indorsers being conditional upon due presentment, such liability is extinguished if that condition is not fulfilled. If the holder neglects to present the instrument, he cannot sue the drawer and the indorsers on the instrument. In presenting an instrument for payment the holder should exhibit it to the person from whom he demands payment, and when the instrument is paid the holder must forthwith deliver it up to the person who pays it. *Hansard* v. *Robinson* (1827), 7 B. & C. 90. If the holder fails to present the instrument for payment according to the provisions of the Act, he cannot sue his transferor on the original consideration or for failure of consideration. *Camidge* v. *Allenby* (1827), 6 B. & C. 373.

Presentment by and to whom.—When presentment for payment is to be made, it must be made by the holder or some person authorized to receive payment on behalf of the holder. Presentment for payment must be made to the principal debtor, namely, the maker of a promissory note, the acceptor of a bill of exchange and the drawee of a cheque, or to their duly authorized agents. Where the maker, acceptor, or drawer has died, presentment may be made to his legal representative, or where he has been declared an insolvent, then to his assignee. (See S. 75.)

Exception.—The "exception" is not a real exception to the rule contained in the section, for the section requires presentment for payment to charge the drawers and the indorsers, and does not deal

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with the case in which presentment is necessary to charge the maker of a note. The proper place of this "exception" would have been below section 74, which deals with the presentment of instruments payable on demand. The effect of this "exception" is that where a promissory note is payable on demand and is also payable at a specified place, presentment of the note is necessary in order to charge the maker thereof. *People's Instalment & Savings Bank Ltd.* v. *Ram Nath,* A.I.R. (1933), Lah. 133. The practical result of the principle stated in the exception is that the maker cannot take advantage of any informality in the presentment to him, and in case of a demand promissory note not payable at a specified place presentment for payment is not necessary to charge the maker thereof. Where a promissory note is expressed to be payable on demand, but no place of payment is specified in it, the expression on demand is a mere technical expression meaning that payment ought to be made immediately or at once. It does not import a condition that a demand should be made before action is brought. The action itself is a demand. *Ramchandar Ghosaul* v. *Juggotmonmohiney,* 4 Cal. 283; *Perumal Aiyan* v. *Alagirisami,* 20 Mad. 245.

Hours for presentment.

65. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

Presentment for payment of instrument payable after date or sight.

66. A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

NOTES

Presentment of instrument payable after date or after sight.— The rule stated in this section should be declared more generally, and should provide that a bill or note payable otherwise than on demand must be presented for payment at maturity. Only two kinds of instruments *not payable on demand,* viz.: those payable at a specified period after date, and those payable at a specified period after sight, are mentioned in this section. But these are not the only instruments *not payable on demand,* for example, a bill payable on the lapse of a certain period after the occurrence of a specified event is not payable on demand, and no provision is made for the presentment of such a bill. The general rule, therefore, is that all instruments payable *otherwise than on demand* must be presented for payment at maturity, though the present section mentions only two classes of instruments.

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Bills and notes must be presented for payment on the day they fall due, and where days of grace are allowed, they must be presented on the last day of grace. An earlier presentment is premature and ineffectual. *Wiffen* v. *Roberts* (1795), 1 Esp. 262. Thus, where a bill was presented after the period specified for payment but before the expiry of the period of grace, it was held it was not a valid presentment. *Jhandu Lal* v. *Wilayati Begum*, 47 All. 572.

Presentment for payment of promissory notes payable by instalments.

67. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment of such presentment has the same effect as non-payment of a note at maturity.

NOTES

Presentment of promissory notes payable by instalments.—When a promissory note is payable by instalments, the presentment of such a note is to be made as each instalment falls due, allowing three days of grace for each instalment. If default is made in making presentment of a note payable by instalments when an instalment falls due, the indorsers *only as to that instalment* would be discharged from liability to the holder. But such notes usually contain a stipulation that in default of payment of any instalment the whole shall become due, a non-presentment of such a note would discharge the indorsers *altogether on the note.*

Presentment for payment of instrument payable at specified place and not elsewhere.

68. A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

NOTES

Place of presentment.—Where a bill is drawn or accepted payable at a particular place, want of presentment at the specified place will not discharge the acceptor. In order to compel presentment at that place, the acceptor must accept the bill payable "at a specified place and not elsewhere."

Illustrations

(1) A bill is accepted "payable at the Bank of Bombay." This is a general acceptance, and want of presentment at the Bank of Bombay will not discharge the acceptor.

(2) A bill is accepted "payable at the Bank of Bombay and *not elsewhere*." The holder must present it at the Bank of Bombay before he can sue the acceptor.

Default in presentment at the specified place has the effect of discharging *all* the parties thereto, this would include the acceptor of a bill and the maker of a note; whereas under section 64 only *other* parties are discharged by non-presentment.

Instrument payable at specified place.

69. A promissory note or bill of exchange, made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

NOTES

Though the section only mentions the case of the maker of a note and the drawer of a bill, the case of an indorser of a bill, note or cheque stands on the same footing, and presentment to the maker or acceptor at the place specified in the note or bill is necessary in order to charge the indorser. In default of such presentment the indorser would, by section 64, be discharged from liability to the holder. Where a note is made payable at either of two places it is sufficient to present it at any one of the places. *Beeching* v. *Gower* (1816), Holt's N.P.C. 313; *Pollard* v. *Herries* (1803), 3 B. & P. 335.

A promissory note made "payable at Poona, Bombay or elsewhere" is not a promissory note payable at a specified place within the meaning of section 69 of the Negotiable Instruments Act, 1881, and does not stand in need of presentment for payment. The expression "specified place" in section 69 of the Act means a place so particularised that the promisee can know where he must present the promissory note for payment. *Dorabji* v. *Jamshedji,* 38 B.L.R. 395.

A city, town or village, at large may be taken to be a specified place within the meaning of sections 64 and 69 of the Negotiable Instruments Act, but presentment of the promissory note there would only be necessary or reasonably possible, if the maker has a residence or place of business there, or is found to be personally present there. *Mohommad Ismail-Moula Bakhsh* v. *Abdul Majid Khan* (1937), Lah. 580.

Presentment where no exclusive place specified.

70. A promissory note or bill of exchange not made payable as mentioned in Sections 68 and 69, must be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

NOTES

Presentment at place of business or residence.—Where presentment for payment is to be made, it must, according to sections 68 and 69, be at the place of payment specified in the instrument by the maker, drawer or acceptor. The section says that if no such place be so stated, the instrument must be presented at the place of business (if any), or at the usual residence of the maker, drawee or acceptor as the case may be. The section does not say whether the holder has any option in presenting when the maker or acceptor has both a place of business and a residence. Presumably, the section does not give the holder any such option, for it would be absurd to present a bill to a trader at his priate residence instead of at his place of business. Where no place of payment is mentioned in the instrument, but the address of the drawee is given, the instrument may be presented at that address. *Buxton* v. *Jones* (1840), 9 L.J.C.P. 257.

Presentment when maker, etc. has no known place of business or residence.

71. If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

NOTES

Presentment in person.—If a maker, drawee or acceptor has no known place of business or fixed residence as mentioned in section 70, presentment may be made to him *personally*, wherever he may be found. A presentment, therefore, to the party in person in the street or in any other place where he can be found, may be made under the authority of this section. *Cross* v. *Smith* (1813), 1 M. & S. 545.

Presentment of cheque to charge drawer.

72. Subject to the provisions of Section 84, a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

NOTES

Presentment of cheques to charge drawer.—This section must be read with section 84. According to section 6, cheques are bills of exchange drawn on bankers and payable on demand. Cheques, therefore, like other bills of exchange must be presented for pay-

ment to the bank on which they are drawn, and only on such presentment and dishonour could the holder sue the drawer. The combined effect of sections 72 and 84 is that if a cheque is not presented within a reasonable time, and in consequence of non-presentation the drawer suffers damage, the drawer is discharged to the extent of the damage suffered.

Presentment of cheque to charge any other person.

73. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

NOTES

Presentment of cheques to charge indorsers.—A cheque is generally intended for immediate payment and not for circulation. The drawer's liability on presentment of a cheque is fixed by section 72. The present section deals with the liability on presentment of any person except the drawer, which means the "indorsers." In order to charge an indorser it is necessary that the cheque must be presented within a reasonable time from the *delivery* of the cheque by such indorser, and not from the time when the holder receives it from any prior indorser. Thus, *A* indorses, and delivers a cheque to *B*, and *B* keeps it for any unreasonable length of time, and then indorses and delivers it to *C*. *C* presents the cheque for payment within a reasonable time after its *receipt* by him and it is dishonoured. *C* can enforce payment against *B* but not against *A*.

Presentment of instrument payable on demand.

74. Subject to the provisions of Section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

NOTES

Presentment of bills and notes payable on demand.—Section 31 deals with the liability of the drawee of a cheque to the drawer, and therefore its connection with the present section, which speaks of presentment of an instrument for payment, is not easy to discover. Sections 72 and 73 relate to the presentment for payment of a cheque in order to charge the drawer and the indorsers. The scope of the present section, therefore, seems to be confined to the presentment of negotiable instruments payable on demand *other than* cheques, i.e. bills and notes payable on demand. Such instruments being payable immediately, the section requires that they must be presented within a reasonable time after they are received by the holder. A presentment therefore, of an *on demand* note or bill by the last holder, within a

reasonable time after he receives the instrument, secures to him the liability of his immediate indorser as well as of all parties whose names appear on it. As to what is "reasonable time," see section 105.

Presentment by or to agent, representative of deceased, or assignee of insolvent.

75. Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.

NOTES

Presentment to whom.—The marginal note to the section is not accurate. The section only treats of persons *to* whom presentment for acceptance or payment may be made. The section says nothing of the persons *by* whom presentment may be made. This is dealt with in sections 61 and 64. According to section 64 presentment for payment must be made *to* the maker of a note, acceptor of a bill, and the drawee of a cheque. Under the present section presentment for pay-

75B. Presentment of negotiable instruments in riot areas not necessary:—

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force, no presentment for acceptance or payment of a negotiable instrument shall be necessary, and the instrument shall be deemed to be dishonoured at the due date for presentment if it is not possible for the holder thereof, being a bank, to present the instrument for acceptance or payment on account of the prevalence of riot or other disturbances in the area in which such presentment is to be made.

(2) Every bank which treats any negotiable instrument as dishonoured under sub-section (1) shall send to the Reserve Bank of India a return signed by two responsible officers of the bank in such form and manner as may be prescribed by the Reserve Bank of India.

Explanation.—For the purpose of this section a bank shall include a company or corporation incorporated by or under any law in force in any place in or outside the Provinces of India, which transacts the business of banking in any of the Provinces of India.

NOTES

This section was added by the Negotiable Instruments Act and the Indian Limitation Act (Temporary Amendment) Ordinance, 1947.

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if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or,

if the instrument not being payable at any specified place, he cannot after due search be found ;

(*b*) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment ;

(*c*) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part payment on account of the amount due on the instrument,

or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment ;

(*d*) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

NOTES

When presentment for payment unnecessary.—The present section specifies the circumstances in which presentment for payment is dispensed with, and thus contains exceptions to the rule contained in section 64. The following are cases in which presentment for payment is dispensed with under the section :—

(1) **Presentment intentionally prevented.**—If the maker, acceptor or drawee of a note, bill or cheque actively does something whereby he intentionally prevents presentment, the holder is excused from making presentment. Thus, where he puts any obstacle in the way of the holder making presentment, or deprives the holder of the instrument and sits over it till after maturity, or misleads the holder so as to make it impossible for him to present, in all these cases he intentionally prevents the holder from presenting the instrument and thereby excuses the holder from making presentment.

(2) **Business place closed.**—Where an instrument is payable at the place of business of the maker, acceptor or drawee of a note, bill or cheque, and he closes such place on a business day during the usual business hours, presentment for payment is not necessary, for when a person intentionally closes his place of business, the presumption is that he wishes to avoid payment.

(3) **No person at the place of payment.**—Where an instrument is payable at a specified place, and neither the maker, acceptor or

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drawee, nor any person authorized to pay it, is present at such place to pay or rufese payment during the usual business hours, presentment for payment is dispensed with. *Howe* v. *Bowes* (1812), 12 East. 112.

(4) Payer cannot be found.—If the instrument is not payable at a specified place, it is the duty of the holder to make inquiries and use due diligence to find out the maker, acceptor or drawee for presenting to him the note, bill or cheque for payment. If after search, the maker, acceptor or drawee cannot be found, presentment for payment is not necessary. What is due diligence is in each case a question of fact. *Hardy* v. *Woodroffe* (1818), 2 Stark. 319.

(5) Waiver express or implied.—Clauses (*b*) and (*c*) of the section deal with cases in which presentment for payment is waived. Presentment of a note or bill at maturity is not necessary if the party entitled to require presentment waives it, and promises to pay it notwithstanding non-presentment. A waiver of presentment may be embodied in the instrument itself by such words as " presentment waived " or other words to that effect. A waiver of presentment may be express or implied, and may be made at any time before or after maturity. *Jhandu Lal* v. *Wilayati Begum*, 47 All. 572. A waiver is said to be implied when any act or conduct of the party is likely to produce in the mind of the holder, the impression that the instrument need not be presented for payment. Clause (*c*) refers to waiver *after* maturity, and the cases referred to therein are instances of *implied* waiver. Clause (*c*) states that such implied waiver may be inferred when after maturity of the instrument any party: (1) makes a part payment on account of the amount due thereon; or (2) promises to pay the amount due thereon in whole or part; or (3) waives his right to take advantage of any default in presentment for payment.

(6) When drawer could not suffer damage.—If want of presentment is not likely to cause the drawer any injury or loss, presentment for payment by the holder is excused. Where the drawer has no funds belonging to himself in the hands of the drawee, and the drawer has no reason to expect that the bill would be paid, if presented, this is considered as a case in which no possible prejudice can result to the drawer, and presentment is dispensed with. *Wirth* v. *Austin* (1875), 10 L.R.C.P. 689. But if the drawer has reason to believe that on presentment the bill will be honoured, the holder is bound to present the bill in order to charge the drawer, even though the latter may not have provided the drawee with sufficient funds to meet it. *Prideaux* v. *Callier* (1817), 2 Stark. 57. The onus of showing that the drawer could not suffer damage is on the person who wants to excuse himself for non-presentation. *Madho Ram* v. *Durga*

Sections 76-78.]

Prasad, 33 All. 4; *Gaya Din* v. *Sri Ram*, 39 All. 364. Clause (*d*) mainly deals with accommodation bills when they are drawn for the accommodation of the drawer. *Saul* v. *Jones* (1858), 28 L.J.Q.B. 37.

Section 76(*d*) does not apply to the case of promissory notes, as the Act, throughout makes a distinction between "drawer" and "maker" and does not use them as synonymous terms. *Mahommad Ismail-Maula Bakhsh* v. *Abdul Majid Khan* (1937), Lah. 580.

Liability of banker for negligently dealing with bill presented for payment.

77. When a bill of exchange accepted payable at a specified bank, has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

NOTES

Banker receiving bill for payment.—If a banker receives a bill of exchange for payment and dishonours it, it is his duty to keep the bill in his possession properly and with caution, so as not to cause any loss to the holder, and to return it to him in the same state as it was when left with him. If he keeps the bill and refuses improperly to deliver it, or negligently delivers it to the wrong person, or negligently deals with it so as to cause loss to the holder, he must compensate the holder for such loss. The effect of this section is to constitute the banker to whom presentment is made *a bailee* for the holder.

CHAPTER VI

OF PAYMENT AND INTEREST

To whom payment should be made.

78. Subject to the provisions of Section 82, clause (*c*), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

NOTES

Payment to whom.—This section deals with the question of the discharge of a negotiable instrument by payment. Under this section payment, in order that it may operate as a discharge, must be made to the person who is the holder of the instrument, or to some person duly authorised by him. The words of the section are imperative, and a payment, therefore, to any other person will not operate

Section 78.]

as a discharge, unless the holder elects to treat the payment to any other person as payment to himself. *Field* v. *Carr* (1828), 5 Bing. 13. Thus, a bank holding a bill for collection with a lien upon it, is a holder in due course and any payment made to the original indorser for collection in respect of the bill cannot be taken to discharge the liability of the acceptor. *Royal Bank of Scotland* v. *Rahim*, 49 Bom. 270.

The person to whom the payments should be made in order to discharge the maker or the acceptor from all liability under the instrument is the holder of the instrument or his accredited agent, such as a banker acting as an agent for collection. In order to discharge the maker or the acceptor from liability payments must be made to the payer or the holder of the instrument. A valid discharge can be given to the maker or the acceptor of the instrument only by the payee of the note or the holder thereof. There is no such thing as a benami promissory note taken in the name of one person but really meant for another. Thus, where a hand note is executed in favour of a benamidar it is not open to the promissor to assert that the holder of the note is not the beneficial owner. Conversely, if a suit is to be based upon the note, it must be instituted by the holder and not by any person who alleges that the original holder in his benamidar and that he is the beneficial owner. *Lachmi Chand* v. *Madanlal Khemka*, A.I.R. (34), 1947, Allahabad 52.

Section 78, however, does not deal with the right of suit, and hence the real owner of the note can sue on the note, provided he is in a position to obtain a good discharge from liability from the maker or the acceptor of the note. Thus, where a promissory note was executed in favour of an individual person, who was described as the owner and manager of a certain religious institution, which later on became a registered society, and a suit on the note was instituted in the name of the registered society, through its Secretary, but the payee of the promissory note was not made a party to the suit: it was held that it could not be said that the plaintiff registered society was in a position to secure a discharge of the maker of the note from all liability under the note and hence the suit as brought was not maintainable. *Lachmi Chand* v. *Madanlal Khemka*, A.I.R. (34), 1947, Allahabad 52.

Possession of the bill is *prima facie* evidence of the identity of the holder, and where a holder presents a bill for payment to the acceptor, the latter must pay or refuse payment at his own peril. If it turns out that he has paid the wrong person, he may be called upon to pay a second time. If he refuses to pay, he runs the risk of an action being brought against him for dishonour. The maker

Section 78.]

of an instrument is entitled to pay to the holder, even though he may receive notice that the debt, for which the instrument was given, had been assigned. *Spencer* v. *Shearman* (1898), 2 Ch. 582. According to the English Bills of Exchange Act, if a negotiable instrument has been paid in good faith and without any notice of defect of title, the payment is valid and the instrument is discharged. If a negotiable instrument, therefore, is made payable to bearer, or is indorsed in blank, so that title to it passes by mere delivery, a finder or a thief can receive payment and give a valid discharge. A payment in due course to that person discharges the maker or the acceptor. Though the definition of "holder" in section 8 of the Act is not wide enough to include a finder or a thief, and though under the present section payment is to be made to a holder, practically the same result is achieved, under the Act also, as this section is to be read subject to section 82, clause (*c*). Under section 82, clause (*c*), payment in due course of an instrument payable to bearer or indorsed in blank discharges the maker, acceptor or indorser, and the definition of "payment in due course" under section 10 is wide enough to include payment to a thief or a finder of the instrument. On the other hand, if an instrument is specially indorsed and the instrument is forged, the maker or acceptor cannot discharge the bill by payment to the holder however innocently he acts. A person claiming under a forged indorsement, though he may be a *bona fide* transferee for value, is not a holder, and payment to such person would not, except in cases coming under section 85, operate as a discharge as against the true owner.

Illustrations

(1) A bill is indorsed to John Brown or order. At maturity the holder is another person of the name of John Brown, who indorses the bill and presents it for payment. The acceptor pays him. The bill is *not* discharged and the acceptor must pay again the real John Brown.

(2) A bill indorsed in blank is stolen. At maturity the thief presents it to the acceptor for payment who pays it in due course. The bill is discharged.

(3) A bill has been obtained by the indorsee by fraud. The indorsee presents it at maturity to the acceptor who pays it in due course. The bill is discharged. *Roberts* v. *Tucker* (1851), 16 Q.B. 576.

Payment by whom.—Payment will not operate as a discharge of an instrument unless it is made by or on behalf of the maker or acceptor. The maker or acceptor would not be discharged by a payment made by the drawer, or an indorser or by a stranger *on his own account.* If a stranger pays the amount of the instrument, to the holder, he would be regarded as a mere purchaser of the instrument. *Jones* v. *Broadhurst* (1850), 9 C.B. 173. But a payment by a stranger

Section 78.]

on behalf of a party to the instrument produces the same legal effect as if it were authorized by that party. The payment by the stranger, however, must be for and on account of the debt. If the amount due under an instrument is paid by the drawer or an indorser, the instrument is not discharged and may be further negotiated by the drawer or indorser paying it, though the acceptor is liable to the drawer or indorser so paying. In case, however, of an accommodation instrument, a payment by the party accommodated would discharge the instrument. *Jameson & Co.* v. *Scott*, 36 Cal. 291.

Time of payment.—If a negotiable instrument is paid by the acceptor *at or after maturity*, the bill is discharged, and no action can then be brought upon it. But if the payment is made before maturity the maker or acceptor can re-issue it, since payment before maturity operates as a purchase of the instrument. The instrument, under such circumstances, is not discharged, and the acceptor will be liable to pay again on the instrument in the hands of a *bona fide* transferee for value. *Burbridge* v. *Manners* (1812), 3 Camp. 193. Where a payment is made by the maker or acceptor before maturity, he must get possession of the instrument, in which case he can re-issue the instrument so as to make himself and all subsequent parties liable. *Morley* v. *Culverwell* (1840), 7 M. & W. 174; *Attenborough* v. *Mackenzie* (1856), 25 L.J. Ex. 244. The re-issue may take place any number of times before the maturity of the instrument. But the above observations as to premature payment can only apply to instruments which are payable at a determinable future time, and not to those which are payable on demand, since they cannot be prematurely paid being due the moment they are presented.

Medium of payment.—A negotiable instrument is always expressed to be payable in money, and a holder is entitled to insist upon being paid in money, i.e. coins, currency or other legal tender, and cannot be compelled to accept payment in any other medium or form. But if the holder agrees, instead of receiving payment in money, to accept satisfaction of his debt in any other mode, payment by such mode is good. Thus, the holder may, if he so chooses, receive goods or a fresh bill or note in lieu of money, and satisfaction thus obtained will operate as a discharge. *Sibree* v *Tripp* (1846), 15 M. & W. 23. Payment is deemed to be complete as soon as the money is received by or on behalf of the holder. In the case of a payment by a banker, payment is complete as soon as the money is laid upon the counter to be taken by the receiver. *Chalmers* v. *Miller* (1862), 32 L.J.C.P. 30. If the whole of the amount of a bill is not paid, but a part only, such part payment does not discharge

Sections 78-79.]

the whole debt. The right of the holder is reduced by the amount paid, and he may sue for the balance.

Interest when rate specified.

79. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

NOTES

Specified rate of interest.—Stipulations for the payment of interest may be incorporated in a bill or note in any form. (See S. 5). This section deals with the *rate* of interest and the time *from* which it begins to run, and the time *upto* which it is to be calculated. As to the rate of interest, the terms of the section are imperative, and prior to the passing of the Usurious Loans Act (Act X of 1918), where the rate of interest was specified in the instrument, however high it might have been, the Court had no discretion to alter it, but was bound to grant interest at that rate. *Govindjee* v. *Ko Poyce*, 4 Bur. L.T. 203. The Court had no power to refuse to allow interest at the rate specified in the instrument, unless there were circumstances which avoided the contract. So long as the parties dealt fairly and openly with one another, they were at liberty to fix any rate of interest they pleased and the Court was bound to see that the contract was performed. But now section 79 of the Negotiable Instruments Act is to be read subject to the Usurious Loans Act. The Court has, under this Act, power to grant relief against excessive interest.

Usurious Loans Act.—The object of the Usurious Loans Act is to prevent Courts of law from "being used for the purpose of enforcing harsh and unconscionable loans carrying interest at usurious rates." The powers given to the Courts by the Usurious Loans Act can be exercised in the following circumstances:—

When a suit is brought by a creditor (*a*) for the recovery of a loan, or (*b*) for the enforcement of any security or agreement in respect of a loan, and in such a suit the Court has reason to believe:—

(1) that the interest is *excessive*; and

(2) that the transaction was, as between the parties thereto, *substantially unfair*,

then the court may *re-open the transaction*, and *relieve the debtor of liability in respect of excessive interest*, or *re-open any*

Section 79.]

account already taken between them, and order the creditor *to refund* any sum paid to him in excess of what was reasonably due, *or set aside or alter any security or agreement* in respect of the loan. But where the agreement purporting to close previous dealings has been entered into by the parties or any persons from whom they claim at a date more than six years from the date of the transaction which is the subject of the suit, it *cannot* be re-opened by the Court. In the same manner, a Court acting under this Act has no power to do anything which affects any decree of a Court.

In the exercise of the powers mentioned above, the Court shall have regard to the following circumstances:—

(1) The risk incurred by the creditor.

(2) The total advantage derived by the creditor from the transaction.

(3) The financial condition of the debtor and the presence or absence of security.

(4) The necessities or supposed necessities of the borrower, and the relation in which the creditor stood to the debtor.

The Court's powers to grant relief under this Act do not in any way prejudice the rights of any transferee for value, who satisfies the Court that the transfer to him was made *bona fide*, and that he had at the time of such transfer no notice of any fact which would have entitled the debtor as against the original lender to relief under this Act.

It is important to bear in mind that the Usurious Loans Act *does not apply to a debtor's suit.* The Court can grant relief only when the suit is brought by a creditor. The court has no power under this Act to grant relief to a debtor in a suit brought by him. When a suit is brought by a debtor, the only cases in which the Court can grant him relief against excessive interest are:

(*a*) where undue influence has been exercised by the creditor and the transaction amounts to an unconscionable bargain. [See Ss. 16(3) and 19A of the Indian Contract Act.]

(*b*) where the stipulation for payment of interest is by way of penalty. (See S. 74 of the Indian Contract Act.)

Time from and up to which interest is calculated.—Under the sections, the interest, when the rate is specified in the instrument, is to be calculated from the date of the instrument upto the time of tender or realization of the amount of the principal money. When the instrument is undated parol evidence may be given to show the date on which the instrument came into existence. If the holder

files a suit to recover the amount of the principal money and interest, interest shall be calculated from the date of the instrument till a date to be fixed by the court. The section gives the court a discretion as to the time *upto* which it shall allow interest.

Interest when no rate specified.

80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall, notwithstanding any agreement relating to interest between any parties to the instrument, be calculated at the rate of six per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

Explanation.— When the party charged is the indorser of an instrument dishonoured by non-payment he is liable to pay interest only from the time that he receives notice of the dishonour.

NOTES

Interest when no rate specified.—This section governs cases in which interest is mentioned in the instrument but no rate of interest is specified, as well as cases in which no mention is made of interest at all. The mercantile usage, which prevailed before the Act was not abrogated by this section, though the rate of interest is limited by this section to six per cent. *Best* v. *Haji Mahammad Sait*, 23 Mad. 18. Where a bill or note is silent as to interest the silence is, under this section, tantamount to an agreement to pay interest at the rate of 6 per cent per annum. If an instrument is silent as to interest, no *oral* contemporaneous agreement will be admissible in evidence to prove that a different rate of interest was agreed upon by the parties other than the rate provided for by this section. The words "notwithstanding any agreement relating to interest between any parties to the instrument," were substituted for the words "except in cases provided for by the Code of Civil Procedure, section 532," by section 2 of the Negotiable Instruments (Interest) Act XXX of 1926. The amendment, (whereby the words "notwithstanding any agreement relating to interest between any parties to the instrument" were substituted for the words "except in cases provided for by the Code of Civil Procedure, section 532") has the effect of enabling the Court to allow interest at the rate of 6 per cent even in summary suits on negotiable instruments. In a suit on a negotiable instrument, under the summary procedure, the Court has power to award the statutory rate of interest, six per cent per

Sections 80-81.]

annum, when there is no term in the instrument for the payment of interest. The operation of section 80 of this Act is not excluded by Order XXXVII, rule 2, of the Code of Civil Procedure. *Venkatachalapathi, Ltd.* v. *Nanjappa*, 56 Mad. 398.

The liability on a promissory note payable on demand arises from the date of the note and not from the date on which a demand is made for payment. The interest on the amount, therefore, runs from the date of the demand promissory note. *Framroz Edulji* v. *Mahomed Essa*, 28 Bom. L.R. 141. Where, after making a demand, a suit is brought against the maker of a promissory note payable on demand, but the note is silent as to interest and specifies no place for payment, interest at the rate of six per cent per annum is recoverable on the amount of the note from its date, under section 80 of the Negotiable Instruments Act. *Ganpat* v. *Sopana*, 30 Bom. L.R. 1.

The plaintiff brought a suit upon six hundis drawn by defendant upon himself in favour of the plaintiff. The hundis were silent as to interest; but there was, in accordance with the custom prevailing in the district, a collateral agreement embodied in written documents that the hundis should bear interest at a rate equivalent to 30 per cent per annum. The defendant contended that notwithstanding the agreement of the parties, the plaintiff's right to interest was restricted to 6 per cent by S. 80 of the Negotiable Instruments Act, 1881. *Held* that S. 80 of the Negotiable Instruments Act, 1881, presented no bar to the recovery of the stipulated amount of interest. Section 80 of the Negotiable Instruments Act, 1881, does not purport to deprive those dealing without such instruments of the freedom of contract possessed by other contracting parties. It purports to confer a right to interest, not to take away such a right otherwise existing. When a plaintiff has to rely upon the section as the ground of his claim to interest no doubt the terms of the section must be followed. But to read the section as depriving him of a contractual right of interest would be to read into it something which it does not say, and which cannot reasonably be implied from its language. *Goswami* v. *Ram Narain*, 9 Bom. L.R. 1.

Delivery of instrument on payment or indemnity in case of loss.

81. Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced to be indemnified against any further claim thereon against him.

NOTES

Payer to be shown the instrument.—When the holder of a negotiable instrument presents it for payment he must exhibit the instrument to the person from whom he demands payment, and when the instrument has been paid, the holder must deliver it up to the party paying him. This provision is added for the protection of the payer, for (1) the production of the instrument is a means of identifying the person paid, and (2) the paid instrument when delivered to the payer is kept by him as a voucher for his paying the amount. *Hansard* v. *Robinson* (1827), 7 B. & C. 90. The section further provides that any person liable to pay and paying the amount on an instrument which is lost or cannot be produced shall be indemnified against any further claim against him on the instrument. Under O. VII, r. 16 of the Civil Procedure Code a suit may be maintained on a lost negotiable instrument, and the Court may grant relief upon indemnity being given by the plaintiff to the satisfaction of the Court.

CHAPTER VII

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES

82. The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon—

Discharge from liability—

(*a*) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder ;

by cancellation :

(*b*) to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge ;

by release :

(*c*) to all parties thereto if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.

by payment.

NOTES

Discharge.—This chapter, with the exception of section 90, deals with discharge of parties from liability on a bill, note or cheque. The

Section 82.]

term discharge in relation to negotiable instruments is used in two senses. The discharge of an instrument is to be distinguished from the discharge of one or more of the parties from liability thereon. So long as a negotiable instrument is in existence and valid there are certain rights of action upon it, but when these rights have been extinguished the instrument is discharged; the instrument ceases to be negotiable and even a holder in due course cannot then acquire any right of action upon it. An instrument is said to be discharged only when the party who is ultimately liable thereon is discharged from liability. The discharge, therefore, of one or more of the parties to a bill or note does not discharge the instrument itself. Thus, in the case of an ordinary note or bill the discharge of the drawer or indorser would not discharge the instrument, but the discharge of the maker or acceptor thereon will have such an effect. The most obvious and general method of discharging or extinguishing the right of action upon a negotiable instrument is payment by the acceptor or maker according to the tenor of the instrument. The section mentions the following three modes of discharge from liability:

(1) **Cancellation.**—When the holder of a negotiable instrument or his agent cancels the name of any party on the instrument with intent to discharge him, such party and all subsequent parties, who have a right of recourse against the party whose name is cancelled, are discharged from liability to the holder. *Sweeting* v. *Halse* (1829), 9 B. & C. 365, 569. The subsequent parties are in the position of sureties to the prior party whose name is cancelled, and a discharge of the principal debtor discharges the sureties. Thus, the cancellation of the drawer's name would discharge him and all the indorsers; the cancellation of an indorser's name would discharge him and all the indorsers subsequent to him; and the cancellation of the acceptor's name would discharge him and all the parties to the instrument. Though clause (*a*) of the section makes no mention of the cancellation of the maker's name, it is clear that he being a party primarily liable on a promissory note, the cancellation of his name would discharge him and all parties subsequent to him, i.e. it would operate as a discharge of the instrument. A cancellation to be effectual must be *intentional* and one made unintentionally or by mistake or without authority of the holder will be inoperative. *Bank of Scotland* v. *Dominion Bank* (1891), A.C. 592; *Prince* v. *Oriental Bank Corporation* (1878), 3 A.C. 325 (P.C.). The English Bills of Exchange Act, Section 83(2), requires that the cancellation should be *apparent* on the instrument, and though the present section does not expressly provide for it, it seems that the

same condition would also be required in India. The proper and safe mode of cancellation is to draw the pen through the name so as to leave it legible. *Wilkinson* v. *Johnson* (1824), 7 C.B.N.S. 82. Though by the cancellation of his name or of the name of a prior party a person may be discharged from liability *on the instrument*, he may nevertheless be liable in respect of a collateral security given in respect of the debt. *Yglesias* v. *Mercantile Bank of River Plate* (1877), 3 C.P.D. 60.

(2) **Release.**—Though clause (*b*) confines its operation to discharge by release only, it is intended to apply to all cases in which the maker, acceptor, or indorser is discharged otherwise than by cancellation. This would include a discharge by agreement of the parties and would apply to cases of release, renunciation, and accord and satisfaction. Such modes of discharge are provided for by section 63 of the Indian Contract Act. The case of discharge by accord and satisfaction has been considered in section 78.

(3) **Payment.**—When the instrument is payable to bearer, whether originally or by an indorsement in blank, the instrument is discharged by payment in due course.

Discharge by allowing drawee more than forty-eight hours to accept.

83. If the holder of a bill of exchange allows the drawee more than forty-eight hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

NOTES

Discharge by allowing drawee more than forty-eight hours.—By section 63, the drawee of a bill of exchange is entitled to retain it for forty-eight hours to consider whether he will accept it or not. At the expiration of that time the holder should demand re-delivery of the bill either accepted or unaccepted. *Bank of Van Diemen's Land* v. *Victoria Bank* (1871), L.R. 3 P.C. 526, 542. If the drawee does not return the bill duly accepted, the holder must treat the instrument as dishonoured, and should give notice of dishonour to the drawer and all prior indorsers. If, instead of doing so, he allows the drawee more time for deliberation, all parties, under this section, will be discharged from liability to the holder, unless they consent to the allowance of more than forty-eight hours. The expression " all prior parties " in this section includes the drawer.

Section 84.]

When cheque not duly presented and drawer damaged thereby.

84. (1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the banker to a larger amount than he would have been if such cheque had been paid.

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3) The holder of the cheque as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge and entitled to recover the amount from him.

Illustrations

(*a*) *A* draws a cheque for Rs. 1,000, and, when the cheque ought to be presented, has funds at the bank to meet it. The bank fails before the cheque is presented. The drawer is discharged, but the holder can prove against the bank for the amount of the cheque.

(*b*) *A* draws a cheque at Umballa on a bank in Calcutta. The bank fails before the cheque could be presented in ordinary course. *A* is not discharged, for he has not suffered actual damage through any delay in presenting the cheque.

NOTES

Discharge by delay in presentment of cheques.—This section must be read with section 72 which deals with presentment of cheques. To claim the right of resorting to the drawer in case a cheque is dishonoured it is necessary that the cheque should be presented to the drawee within a reasonable time. Cheques are generally intended for immediate payment and not for general circulation. Under this section, if a holder does not present a cheque within a reasonable time after its issue, and the bank fails and the drawer suffers actual damage through the delay, he is discharged from liability to the extent of the damage he has suffered and no more, that is to say, to the extent to which the drawer is a creditor of such banker to a larger amount than he would have been if such cheque had been paid. Thus, at the time of the failure of the bank, if the drawer had the full amount of the cheque deposited with his banker, he will be discharged in full. But if the amount of the cheque was

in excess of the sum the drawer has with his banker at the date of the insolvency of the bank, he suffers damage only in that sum and is discharged to that extent.

The section applies only to the drawer of a cheque, and not to an indorser, the case of an indorser being regulated by section 73. To charge an indorser the cheque must be presented within a reasonable time *after delivery* of it by him. In default of such presentment the indorser would be discharged.

The holder of such a cheque, however, shall be a creditor, in lieu of the drawer, of such banker to the extent of such discharge, and is entitled to recover the amount from him by proving against the insolvent banker. If, however, the drawer had no funds to his credit with his banker, but was authorised to overdraw, the drawer would still be discharged, but the holder could not prove against the insolvent's estate.

Cheque payable to order.

85. (1) Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

(2) Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any indorsement whether in full or in blank appearing thereon, and notwithstanding any such indorsement purports to restrict or exclude further negotiation.

NOTES

Protection of bankers paying cheques.—The drawee of a cheque is always a banker. By this section, bankers are placed in a privileged position as regards the payment of cheques. The section says that if a cheque payable to order purports to be indorsed by or on behalf of the payee, and the banker on whom it is drawn pays it in due course, the banker is discharged, and he can debit his customer with the amount so paid, though the indorsement of the payee might turn out to be a forgery, or though the indorsement might have been placed on the cheque by the payee's agent without his authority. The purpose of the section is to make the banker free from liability in respect of either the genuineness or the validity of the indorsement purporting to be that of the payee or his authorized agent.

Illustrations

(1) A cheque is drawn "payable to *B* or order." It is stolen, and *B*'s indorsement is forged. The banker pays the cheque in due course. The banker is discharged from liability and can debit the drawer's account with the amount of the cheque.

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(2) A cheque is drawn "payable to *B* or order," and delivered to *B* in payment of a debt. *B*'s agent, without having any authority to indorse, indorses the cheque "per pro" for *B* and obtains payment of the money and misappropriates it. The banker is discharged by payment in due course.

Clause (2) of the section.—Clause (2) of this section has been added by the Negotiable Instruments (Amendment) Act XVII of 1934. The object of the amendment is "to provide that cheques originally drawn to bearer shall not lose their bearer character notwithstanding any indorsement thereon whether in full or in blank and whether such indorsement purports to restrict or exclude further negotiation or not. The necessity for the amendment had arisen out of a ruling of the Bombay High Court that under section 50 of the Negotiable Instruments Act, 1881, and the explanation thereto, a bearer bill can legally be changed to an order bill by indorsement. This makes it incumbent on banks to examine all indorsements upon bearer cheques and thus considerably increase their work and responsibility without any compensatory advantage to their constituents or to the general public." (See Statement of Objects and Reasons.) The amendment aims at removing this difficulty of the banks. The ruling of the Bombay High Court referred to above is *Forbes, Forbes, Campbell & Co.* v. *The Official Assignee of Bombay*, 27 B.L.R. 34. (See Notes to Section 50.)

Having regard to the terms of section 16(2) of the Act, the protection afforded by section 85 to the payee of a cheque is extended to cover the case of an indorsement other than that of the original payee. *Jagjiwandas Jamnadas* v. *The Nagpur Central Bank Ltd.*, 50 Bom. 118. This section has no application to the payment of a customer's bills of exchange and promissory notes.

When a payment is made under the circumstances mentioned in this section, the drawee is discharged, but the section does not say that such a payment would discharge the drawer from his liability on the cheque to the true owner. A drawer of a cheque is discharged by payment in due course by the drawee to the *de facto* holder as authorized by this section, for if the true owner claims payment and the drawee refuses on the ground that the cheque had already been paid, such refusal does not constitute *a dishonour* upon which the drawer's liability under section 30 can be founded. The drawee being discharged by payment in due course, the drawer is also discharged. *Sullaman Hussain* v. *New Oriental Bank Corporation Ltd.*, 15 Bom. 267.

Forgery of drawer's signature. Banker and customer.—This section gives no protection to the banker when the drawer's signature is forged. It is the duty of a banker to be acquainted with the

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signature of his customer. If a banker pays a cheque, which bears a signature purporting to be that of his customer, the drawer, and the signature turns out to be a forgery, the banker is the person who loses his money. The banker cannot debit the customer with the amount so paid. The reason of the rule is obvious. If a customer were to be held liable to be debited for money paid under a forged signature, his balance at his bank would decline in an extraordinary manner. In fact any person, who knew that he, the customer, had a banking account could forge his signature and obtain his money. It is the banker's business to prevent this.

Thus, a document in cheque form to which the customer's name as drawer is forged is not a cheque but a mere nullity, and a banker making payment thereupon cannot make the customer liable, except on the ground of negligence imputable to the customer, which negligence was intimately connected with the transaction and was the proximate cause of the loss to the banker. Where the only negligence imputable to the customer was that he allowed his cheque book to remain in an unlocked box, it was held that the customer was not liable to be debited with the loss, although one of the rules of business of the bank said that " constituents should keep all bank cheque form under lock and key, otherwise the bank is not responsible for any loss in this connection." *Perbhu Dayal* v. *Jwala Bank* (1938), All. 634.

In the case of *The Governor and Company of the Bank of Ireland* v. *Trustees of Evan's Charities* (1855), S.H.L.C. 389 (410), Baron Parke observed: " If a man should lose his cheque-book, or neglect to lock the desk in which it is kept and a servant or stranger should take it up, it is impossible in our opinion to contend that a banker paying his forged cheque would be entitled to charge his customer with that payment."

But it is the duty of the customer of a bank in issuing mandates to the bank to take reasonable care so as not to mislead the bank. But beyond the care which must be taken in the transaction itself, the customer is not to take precautions in the general course of carrying out of his business to prevent forgeries on the part of his servants. *Bank of England* v. *Vagliano Bros.* (1891), A.C. 107; *Scholfield* v. *Londesborough* (1896), A.C. 514. Where, however, the customer misleads the bank by want of proper caution in the mode of drawing the cheque, so as to admit of interpolation of an additional word or figure, he cannot complain of a *bona fide* payment of a cheque so altered. Also, if the customer has, by his negligence or default, induced the banker to make the payment, it is the customer and not the banker who must bear the loss. *Young* v. *Grote*

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(1827), 4 Bing. 253. If a cheque be drawn so negligently as to facilitate forgery by alteration of the amount payable, any loss caused by such an alteration will fall on the customer who draws the cheque, and not on his banker. *London Joint Stock Bank* v. *Macmillan* (1918), A.C. 777.

Illustrations

(1) *A* draws a cheque on his bankers for Rs. 50, carelessly leaving a blank space before the words and figures, "fifty". The holder fills it up as a cheque for Rs. 550, and obtains payment. The banker can charge *A*, with the amount so paid. *Young* v. *Grote* (1827), 4 Bing. 153.

(2) *A* draws a cheque to bearer, filling up the space for figures with Rs. 20, but leaving in blank the space for showing the amount in words. A confidential clerk of the drawer fills in the space for words "rupees five hundred and twenty," and alters Rs. 20 into 520. The clerk cashes the cheque and misappropriates the proceeds. The banker can debit *A*'s account with Rs. 520. *London Joint Stock Bank* v. *Macmillan* (1918), A.C. 777.

Drafts drawn by one branch of a bank on another payable to order.

85-A. Where any draft, that is, an order to pay money, drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, purports to be endorsed by or on behalf of the payee, the bank is discharged by payment in due course.

NOTES

By Act XXV of 1930, this section was added to the Indian Negotiable Instruments Act. The object of this section is to afford "protection to bankers in India against forged or unauthorised indorsements on demand drafts, drawn by one branch of a bank upon another branch of the same bank."

Parties not consenting discharged by qualified or limited acceptance.

86. If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

Explanation.— An acceptance is qualified—

(*a*) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated ;

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(*b*) where it undertakes the payment of part only of the sum ordered to be paid ;

(*c*) where, no place of payment being specified on the order, it undertakes the payment at a specified place, and not otherwise or elsewhere, or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere ;

(*d*) where it undertakes the payment at a time other than that at which under the order it would be legally due.

NOTES

General and qualified acceptance.—An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn. The instances of qualified acceptance given in the Explanation to this section are not exhaustive. In particular, an acceptance is said to be qualified which is:—

(1) Conditional.—An acceptance which makes the payment by the acceptor dependent upon the happening of an event therein stated. If the holder acquiesces in a conditional acceptance, it binds him as well as the acceptor, but not the other parties on the bill not consenting thereto.

Illustrations

(1) "Accepted payable when in funds." *Julian* v. *Shobrooke* (1753), 2 Wills. 9.

(2) "Accepted payable on giving up bills of lading for clover per S. S. *Amazon*." *Smith* v. *Virtue* (1860), 30 L.J.C.P. 56.

(3) "Accepted payable when a cargo consigned to me is sold." *Smith* v. *Abbot* (1741), 2 Stra. 1152.

(2) Partial.—An acceptance which undertakes to pay part only of the amount for which the bill is drawn.

Illustration

A bill is drawn for Rs. 1,000 and accepted as follows: "Accepted for Rs. 500 only."

(3) Local.—An acceptance which undertakes to pay only at a specified place and not elsewhere; or to pay at a place different from the place mentioned in the bill and not elsewhere. An acceptance to pay at a particular place is only a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere, in which case it is qualified.

Illustrations

(1) "Accepted, payable at Blankshire Bank." This is a general acceptance.

(2) "Accepted, payable at the Union Bank and not elsewhere." This is a qualified acceptance.

(4) Qualified as to time.—An acceptance which makes the money payable under a bill at a time different from that mentioned in the order of the drawer. The qualification as to time may be introduced in an acceptance by a promise to pay at a time shorter or longer than that mentioned in the order.

Illustration

A bill is drawn payable three months after date The acceptance is as follows: "Accepted, payable at six months after date"

(5) Acceptance by some of the drawees and not by all.—Where a bill is drawn on two or more drawees and is accepted by one or more, but not by all of them, the acceptance is said to be qualified. But if the drawees are partners, one or more can accept on behalf of the other or others and the acceptance is said to be general.

Illustration

A bill is drawn on *A*, *B* and *C* (who are not partners), and is accepted by *A* only *B* and *C* refuse to accept This is a qualified acceptance.

If the acceptor of a bill desires to qualify his acceptance, he must do so on the face of the bill and in clear and unequivocal terms, so that a person taking the bill cannot fail to notice that it is accepted subject to an express qualification. *Meyer* v. *De Croix* (1891), A.C. 520.

Effect of a qualified acceptance.—The holder of a bill is entitled to an absolute and unqualified acceptance and is not bound to take a qualified acceptance. If he cannot get an unqualified acceptance he may treat the bill as dishonoured, and after giving due notice of dishonour pursue his remedies against prior parties. If, however, the holder elects to take a qualified acceptance he does so at his own peril, and discharges all prior parties to himself, unless he obtains their consent to such acceptance. The holder must give notice of the qualified acceptance to all the prior parties, and if on receipt of such notice the drawer and the prior indorsers notify their consent to such acceptance, they will be liable in case the bill is dishonoured. If they or any of them do not assent, the holder by taking a qualified acceptance discharges them or any of them that do not consent.

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87. Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

Effect of material alteration.

and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

Alteration by indorsee.

The provisions of this section are subject to those of Sections 20, 49, 86 and 125.

NOTES

Alteration of documents.—It is a general rule of law that a material alteration of a document by a party to it or while in the custody of a party after its execution, without the consent of the other party, renders it void. The rule is based on sound policy and may be defended on two grounds, namely, first that no man shall be permitted to take the chance of committing a fraud without running any risk of loss by the event when it is detected, and secondly that by the alteration the identity of the instrument is destroyed, and to hold one of the parties liable under such circumstances would be to make for him a contract to which he never agreed. *Gour Chandra Das* v. *Prasanna Kumar Chandra,* 33 Cal. 812, 816. The same consequences follow where an alteration is made by a stranger while the instrument is in the custody of a party, for a person who has the custody of an instrument is bound to preserve it in its integrity. *Davidson* v. *Cooper* (1844), 13 M. & W. 343. In the case of negotiable instruments this rule has been adopted to its full extent by sections 87, 88 and 89 of the Negotiable Instruments Act. In the case of negotiable instruments the rules as to alteration of documents in general must be taken subject to the provisions of the Negotiable Instruments Act.

Alteration must be material.—It may be stated generally that an alteration is material which in any way alters the operation of the instrument and the liabilities of the parties thereto, whether the change be prejudicial or beneficial. Any alteration is material which alters the business effect of the instrument if used for any business purpose. *Aldous* v. *Cornwall* (1988), L.R. 3 Q.B. 513; *Suffell* v. *Bank of England* (1882), 9 Q.B.D. 555. So any change in an instrument which causes it to speak a different language in legal effect from that which it originally spoke, or which changes the legal identity or character of the instrument either in its terms,

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or the relation of the parties to it is a material alteration. *Gour Chandra Das* v. *Prasanna Kumar Chandra*, 33 Cal. 812.

Instances of material alteration.—It has been held that the alterations in the following particulars are material:—

(1) Alteration of the date of the instrument, e.g. where a holder of a bill or note alters the date of the instrument to accelerate or postpone the time of payment. *Outhwaite* v. *Luntley* (1815), 4 Camp. 179.

(2) Alteration of the sum payable, e.g. where a bill for Rs. 500 is altered into a bill for Rs. 3,500. *Scholfield* v. *Earl of Londesborough* (1896), A.C. 514.

(3) Alteration in time of payment, e.g. where a bill payable three months after date is altered into a bill payable three months after sight. *Long* v. *Moore* (1790), 3 Esp. 155.

(4) Alteration of the place of payment, e.g. where a bill is accepted payable at the Union Bank, and the holder, without the consent of the acceptor, scores out the name of the Union Bank and inserts that of the Hudson Bank. *Tidmarsh* v. *Grover* (1813), 1 M. & S. 735.

(5) Alteration of the rate of interest, e.g. where a note payable with "lawful interest" is altered into one payable with interest at 6 per cent. *Warrington* v. *Early* (1853), 23 L.J.Q.B. 47.

(6) Alteration by addition of a new party, e.g. the addition of a new maker to a joint and several promissory note without the consent of the existing makers. *Gardner* v. *Walsh* (1855), 5 E. & B. 83.

The instances given above are not exhaustive.

Alteration not vitiating the Instrument.—In the following cases the alteration of a negotiable instrument will not vitiate the instrument:—

(1) An alteration, though in a material part, will not avoid the instrument, if it is made *before* the instrument is issued or before the instrument has become available against any party thereto. *Downes* v. *Richardson* (1822), 5 B. & Ald. 674.

(2) Where an alteration is made for the purpose of correcting a mistake, e.g. where a bill was dated 1832 instead of 1823, and subsequently the agent of the drawer corrected the mistake. *Brutt* v. *Pickard* (1824), Ry. & M. 37.

(3) An alteration made to carry out the common intention of the original parties, e.g. where the drawer of a negotiable instrument draws a bill but forgets to use the words "or order," the subsequent

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insertion of these words will not vitiate the instrument. *Byrom* v. *Thompson* (1839), 11 A. & E. 31.

(4) If the alteration is made with the consent of parties, then the instrument is binding on them.

(5) Alterations which are *not material* will not avoid the instrument.

Bills of exchange, payable some 60, some 90, and some 120 days after sight, drawn on the appellants were indorsed for value to the respondents, who duly stamped them, and after acceptance noted in the corner of each bill the date for presentation. The parties to the bills having mutually agreed that the dates of payment should be postponed, the respondents altered the dates so altered, but without making any alteration in the bills originally drawn. On presentation for payment at the extended dates the bills were dishonoured by the appellants. *Held,* that there had been no discharge of the bills by material alteration, and accordingly that appellants remained liable. *Pestonji & Co.* v. *Cox & Co.*, 52 Bom. 589.

The holder of a promissory note is not affected by a material alteration in the instrument when the alteration has been made by a stranger without the consent of the holder and without any fraud or laches on his part. *Gourochandro* v. *Krushnacharana* (1941), Mad. 295.

Effect of alteration.—*A material* alteration of a negotiable instrument discharges all parties who are liable on the instrument at the time of the alteration, and who do not consent to such alteration. An alteration does not in any way affect the liability of persons becoming parties subsequent to the alteration. As a general rule a holder, who cannot recover upon an altered instrument, cannot recover upon the consideration which he gave for it. The section expressly provides for the case of an alteration by an indorsee, and says that such an alteration discharges the indorser in respect of the consideration. Even though an alteration may be assented to by all the parties, where an instrument is materially altered it becomes a new instrument and requires a new stamp.

Alterations authorized by the Act.—The last paragraph of the section deals with alterations which are permitted by the Act, and which, though material, do not avoid the instrument. They are:—

(1) Filling blanks of inchoate instruments. (S. 20).
(2) Conversion of blank indorsements into indorsements in full (S. 49).
(3) Qualified acceptance. (S. 86).
(4) Crossings of cheques. (S. 125).

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Acceptor or indorser bound notwithstanding previous alteration.

88. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

Payment of instrument on which alteration is not apparent.

89. Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered,

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon ; and such payment shall not be questioned by reason of the instrument having been altered or the cheque crossed.

NOTES

Payment of altered instruments.—This section affords protection to a person who pays an altered note, bill or cheque. But in order to claim the protection given by this section the following conditions must be fulfilled—

(1) that the alteration should not be apparent,

(2) that the payment must be made in due course,

(3) that the payment must be by a person or banker liable to pay.

If these conditions are satisfied, the effect of such a payment is that the person or the banker who pays the note, bill or cheque is not only discharged from all liability on the instrument, but he can also debit the person on whose account the payment was made with the amount so paid.

Extinguishment of rights of action on bill in acceptor's hands.

90. If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

NOTES

Acceptor as holder.—The rule stated in this section is a deduction from the general principle that a present right and liability united in the same person cancel each other. *Neale* v. *Turton* (1827), 4 Bing. 149, 151. Though payment may be made by any party liable on the instrument, but in order to obtain a complete discharge of

the instrument, payment must be made by the acceptor, for he is the person ultimately liable on the instrument. *Thomas* v. *Fenton* (1847), 16 L.J.Q.B. 362. By this section a bill of exchange is discharged and all rights of action thereon are extinguished if—

(1) the acceptor takes up the bill by paying the holder;

(2) the acceptor becomes the holder of the bill *at or after* its maturity; for a bill negotiated back to its acceptor *before* maturity may be re-issued by him;

(3) the acceptor becomes the holder of the bill "in his own right," for if a bill is negotiated back to its acceptor as executor, administrator or trustee of the holder the bill is not discharged. *Nash* v. *De Freville* (1900), 2 Q.B. 72.

Though the provisions of this section are not extended to promissory notes, precisely the same considerations apply to the maker of a note as to the acceptor of a bill. The maker of a note like the acceptor of a bill is the principal debtor, and if he becomes the holder of the note at or after its maturity in his own right, the note would be discharged and all rights of action thereon would be extinguished. *Beaumont* v. *Greathead* (1846), 2 C.B. 494.

CHAPTER VIII

OF NOTICE OF DISHONOUR

Dishonour by non-acceptance.

91. A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

Where the drawee is incompetent to contract or the acceptance is qualified, the bill may be treated as dishonoured.

NOTES

Dishonour by non-acceptance.—This section deals with the dishonour of bills of exchange by non-acceptance. Such a dishonour may take place in any one of the following ways:—

(1) When a bill is duly presented for acceptance, and the drawee, or one of several drawees not being partners, refuses acceptance within forty-eight hours from the time of presentment the bill is dishonoured.

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(2) Where the drawee is incompetent to contract, the bill may be treated as dishonoured.

(3) When the drawee gives a qualified acceptance, the holder may treat the instrument as dishonoured. (S. 86).

(4) When presentment for acceptance is excused, and the bill is not accepted, it is said to be dishonoured. (As to when presentment for acceptance is excused, see Notes to S. 61).

Dishonour by non-acceptance of a bill gives the holder an immediate right of recourse against the drawer and the indorsers. Dishonour by non-acceptance constitutes a material part of the cause of action against the drawer, and therefore, there is no need to wait till the maturity of the bill or to present it for payment. *Ram Ravji Jambekar* v. *Pralhoddas Subkarn*, 20 Bom. 133.

Dishonour by non-payment.

92. A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

NOTES

Dishonour by non-payment.—This section treats of the dishonour of bills, notes and cheques by non-payment. A bill, note or cheque is dishonoured by non-payment when it is duly presented for payment and payment is refused or cannot be obtained. Again, a negotiable instrument is dishonoured by non-payment when presentment for payment is excused and the instrument when overdue remains unpaid. (See S. 76).

By and to whom notice should be given.

93. When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note or the drawee or acceptor of the dishonoured bill of exchange or cheque.

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NOTES

Notice of dishonour.—This section lays down that in order that the holder of a negotiable instrument may resort to his remedy, he must first of all give notice of dishonour, that is, a formal notice that the instrument has been refused acceptance or payment. The reason why the law requires prompt notice of dishonour is very apparent. The object of giving notice is not to demand payment for the party giving notice, but to warn the party notified of his liability, and in the case of the drawer to enable him to protect himself as against the drawee or acceptor who has dishonoured his draft. A party to a negotiable instrument is aware that he may be called upon to liquidate his liability. It would be a great hardship if he was compelled to lock up his money indefinitely. If the due date of payment passes by, the law allows him to assume, that the instrument has been met in the ordinary course. and his liability is at an end, unless, he has, in the meantime, received information that the instrument has been dishonoured. The necessity for such notice becomes apparent from the nature of the obligations undertaken by the several parties on a negotiable instrument. "All the contracts raised upon the bill, it is seen, except those with the acceptor, are contracts of suretyship, that is to say, are contracts of indemnity. Probably from this, though perhaps from other more strictly mercantile circumstances as for the purpose of making other preparations or modifications in business, notice of dishonour is by the law merchant made a condition of the liability of the surety. The contracts of indorsements then, between the immediate parties to them, are conditional and by way of indemnity. It follows from this that there could be no valid claim in respect of the indorsement, where there is no liability in respect of it. And the two together are the reasons why a failure by an indorsee to give due notice of dishonour not only disables him from recovering against the immediate indorser, but disables a prior indorser to him from recovering against his indorser or a prior indorser to him. The indorsee who has failed to give notice cannot recover because he has not fulfilled the condition of his contract. The others cannot recover because they do not require to be indemnified as they cannot be made liable. For example, the indorser to him who has failed to give notice is not liable to him, and therefore cannot claim against his indorser, and so on." *Horne* v. *Rouguette* (1878), 3 Q.B.D. 514, 518.

Notice by whom.—Notice of dishonour must be given by the holder, or by a person liable on the instrument. But it is not necessary that the notice should always emanate from the holder,

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for he is entitled to avail himself of a notice given by any party liable on the instrument. *Chapman* v. *Keane* (1835), 3 A. & E. 193; *Harrison* v. *Ruscoe* (1846), 15 M. & W. 231. Thus, the holder of a bill may in a suit against the drawer take advantage of a proper notice of dishonour given by an indorser on the bill who at the time of giving such notice was liable to him on the bill. *Lysaght* v. *Bryant* (1850), 9 C.B. 46; *Jameson* v. *Swinton* (1809), 2 Camp. 373. Likewise notice of dishonour may be given by an agent of the holder or of some party liable on the instrument. In order that a party may give a valid notice of dishonour under this section, it is necessary that he should himself be liable on the instrument at the time of giving such notice. A notice, therefore, given by a stranger is a mere nullity, for a stranger cannot by his officious intermeddling establish any right of the holder nor defeat any discharge or defence of the indorsers. *Stewart* v. *Kennett* (1809), 2 Camp. 177; *East* v. *Smith* (1847), 16 L.J.Q.B. 292. Even a notice given by a party to the instrument is invalid, if at the time of giving such notice he is not liable thereon. Thus, a notice given by an indorser is invalid, where he had been discharged from liability on the instrument for want of due notice. The acceptor of a bill can give a valid notice of dishonour for he is a party liable on the bill.

Notice to whom.—Notice of dishonour to the acceptor of a bill or to the maker of a note or the drawee of a cheque is not necessary in order to render them or any other party liable. They are the parties primarily liable upon the instrument, and it is their duty to provide for the payment of the instrument on the due date and at the proper place. It is they who dishonour the instrument by non-acceptance or non-payment, and notice to them will merely be notice of a fact that they are aware of. *Edwards* v. *Dick* (1821), 4 B. & Ald. 242. Notice of dishonour must be given to all parties *other than* the maker or the acceptor or the drawee whom the holder seeks to make liable. In addition to these, section 91 requires that notice of dishonour may be given to a duly authorized agent of the person to whom it is required to be given. Notice may be given to his legal person representative when the drawee or the indorser is dead. Notice may be given to the assignee when the party to whom notice is required to be given has been declared an insolvent. (See S. 94.) Where there are two or more parties jointly liable as drawers or indorsers notice to one of them is sufficient to bind all. It is a matter of importance to make as many persons as possible liable when an instrument is dishonoured. The holder must be alert, and select the persons to whom he wishes to give notice of dishonour. If he gives notice to his immediate transferor, the latter

Sections 93-94.]

is liable to him, though the transferor can in turn give notice to any previous party. But if the holder applies direct to the drawer, the notice of dishonour is good as though given by any of the prior indorsers. If an indorser gives notice, his notice serves as notice given by the holder, and ensures for the benefit of all indorsers prior to himself and subsequent to the party to whom notice is given.

Effect of omission to give notice of dishonour.—The consequence of omission to give notice of dishonour required by this section, except in cases in which notice is dispensed with under section 98, is to discharge all parties who are entitled to such notice. Unless the holder gives notice of dishonour he cannot enforce his rights against the other parties. It is a condition precedent to the liability of the drawer under section 30, and of the indorser under section 35, that notice of dishonour should be duly given to them. When the drawer or indorser of a bill is discharged from his liability thereon by the omission to give him due notice of dishonour, he is discharged also from any liability on the original consideration. *Kuttayan Chetty* v. *Palaniappa Chetty*, 27 Mad. 540; *Krishnaji* v. *Rajmal*, 24 Bom. 360. The provisions of this Act relating to notice of dishonour are applicable to hundis in the absence of any local usage to the contrary. *Krishna Shet* v. *Hari Valji*, 20 Bom. 488.

Mode in which notice may be given.

94. Notice of dishonour may be given to a duly authorized agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

NOTES

Form and mode of notice.—Notice may be oral or written, or it may be partly written and partly oral. Notice does not mean mere knowledge, but actual formal notification. Notice of dishonour may be given in person, or through a messenger, or by post. Notice of

Sections 94-95.]

dishonour should be put in the post-box, and mere delivery of the notice to the post office peon or runner in order to post the notice will not suffice. In case of notice by post, delay or miscarriage of such notice does not render the notice invalid, and the party giving it is exonerated from liability for omission to give notice. No special form of words is necessary for a notice of dishonour, and so long as the particulars required by this section are set out in the notice, it is improbable that any exception would be taken to the same on the ground of irregularity, provided it was not likely to mislead the recipient. The notice must inform the party to whom it is given either by express terms or by reasonable intendment: (1) That the instrument has been dishonoured. The instrument should be indentified in the notice, otherwise the notice will be invalid. (2) In what way. Notice should state whether the instrument has been dishonoured by non-acceptance or non-payment. (3) That he will be held liable on the dishonoured instrument. A mere demand for payment is not a sufficient notice that the instrument in respect of which the demand is made has been dishonoured. *Hurtley* v. *Case* (1825), 4 B. & C. 337. Mere knowledge that the instrument has been dishonoured is not notice. *Cory* v. *Scott* (1820), 3 B. & Ald. 619.

Time and place of notice.—Notice should be given within a reasonable time after dishonour. When the person to whom notice is to be given has a place of business, the notice must be addressed to him at his place of business. But if he has no place of business, then it should be sent to his residence. But where the party has a place of business it is not necessary to send the notice to his residence as well as to his place of business. *Berridge* v. *Fitzgerald* (1869), L.R. 4 Q. B. 639. It is competent to the parties entitled to notice to fix by previous agreement a place to which notice of dishonour may be forwarded, and a notice sent to the place specified is valid though it may take longer time to reach that place than his place of business or residence. *Shelton* v. *Braithwaite* (1841), 8 M. & W. 252. If the holder does not know of the place of business or residence of the person entitled to notice, he must exercise due diligence to ascertain the place.

Party receiving must transmit notice of dishonour.

95. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by Section 93.

NOTES

Notice by parties other than the holder.—Section 93 provided for notice being given by the holder or some party liable on the bill, and such notice is good and enures for the benefit of every other party who stands between the person giving the notice and the person to whom it is given. But a holder may have omitted to give notice to some of the parties above him, and in that case it is always prudent for a man receiving notice to give immediate notice to prior parties whom he wishes to make liable to himself. The section requires such notice to be given within a reasonable time. When a party receives a notice of dishonour he has after the receipt of such notice the same period of time for giving notice to prior parties that the holder has after dishonour.

Agent for presentment.

96. When the instrument is deposited with an agent for presentment, the agent is entitled at the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

NOTES

Agent for presentment.—Where a bill, when dishonoured, is in the hands of an agent, he may either himself give notice of dishonour to the parties liable on the bill, or he may give notice to his principal. He must do so within the same time as if he were the holder, and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder. Where a bill is indorsed by different branches of the same bank, each branch is, for purposes of giving and receiving notice of dishonour, deemed as a distinct holder. *Clode* v. *Bayley* (1813), 12 M. & W. 51.

Illustration

A bill payable in Bombay is indorsed in blank by the holder, and deposited with a banker in Ahmedabad for collection. The Ahmedabad banker's Bombay agent presents it for payment, and on its dishonour, gives due notice thereof to the Ahmedabad banker. The Ahmedabad banker, on the day after the receipt of this notice, gives notice to his customer, who in turn gives similar notice to his indorser. The indorser has received due notice.

When party to whom notice given is dead.

97. When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

Section 98.]

When notice of dishonour is unnecessary.

98. No notice of dishonour is necessary—

(*a*) when it is dispensed with by the party entitled thereto ;

(*b*) in order to charge the drawer, when he has countermanded payment ;

(*c*) when the party charged could not suffer damage for want of notice ;

(*d*) when the party entitled to notice cannot after due search be found ; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it ;

(*e*) to charge the drawers when the acceptor is also a drawer ;

(*f*) in the case of a promissory note which is not negotiable ;

(*g*) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

NOTES

When notice of dishonour is unnecessary.—In a suit against the drawer or indorser on a dishonoured instrument, notice of dishonour is a material part of the cause of action. Notice, however, can be dispensed with under the several cases mentioned in this section. Notice of dishonour is not necessary in the following cases:—

(1) When notice expressly waived.—Notice of dishonour is dispensed with by express waiver by the party entitled to it. A waiver of notice may be made before the time for giving notice has arrived or after the omission to give due notice has occurred.

A party to a bill or note may express waiver of notice on the instrument itself by the addition of such words as " notice of dishonour waived," or other words to that effect. A waiver of notice may be express or implied, and may be made at the time of drawing or indorsing the instrument, or before the time for giving notice has arrived, or after the omission to give due notice. A waiver by a party of his right to receive notice enures for the benefit of all the parties coming after him. *Robey* v. *Gilbert* (1861), 30 L.J. Ex. 170; *Coulcher* v. *Tippin* (1886), T.L.R. 657. But the waiver by a party of his discharge for want of notice does not operate as a discharge of prior parties to the notice. *Roscoe* v. *Hardy*, 12 East. 434.

Illustrations

(1) The drawer of a bill informs the holder that the bill will be dishonoured on presentment. Notice of dishonour is dispensed with. *Brett* v. *Levett* (1811), 13 East. 213, 214.

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(2) The drawer of a bill tells the holder a few days before maturity that he has no fixed residence, and that he will call in a few days to see if the bill has been paid by the acceptor. Notice of dishonour is dispensed with. *Phipson* v. *Kneller* (1815), 4 Camp. 285.

(2) By the drawer countermanding payment.—Where the drawer has countermanded payment, he, having put an impediment in the way of the holder obtaining payment, is not entitled to notice of dishonour.

(3) When no damage to party charged.—When a party charged could not suffer any damage for want of notice, it is not necessary to give him such notice. Neither presentment nor notice of dishonour is necessary, if it is shown that at the time when the instrument was drawn there were no funds belonging to the drawer in the hands of the drawee. *Subrao* v. *Sitaram*, 2 Bom. L.R. 891. *Bickerdike* v. *Bollman* (1785), 1 T.R. 405.

Illustrations

(1) *A*, having the balance of Rs. 100 at his bankers and having no authority to overdraw, draws a cheque for Rs. 500. *A* is not entitled to notice of dishonour. *Carew* v. *Duckworth* (1868), L.R 4, Ex. 613

(2) *A* draws a bill on *B*, who is under no obligation to accept or pay it, and has not held out that he will do so. *A* is not entitled to notice of dishonour

(4) Ignorance of party's residence.—Ignorance of a party's residence excuses want of due notice of dishonour, provided the holder has used reasonable diligence to find it out. *Bateman* v. *Joseph* (1810), 2 East. 433. But the holder is bound to make reasonable inquiries to ascertain the place of business or the residence of the person entitled to notice, and if, after the exercise of due diligence he is unable to find the party, notice of dishonour is dispensed with. Delay in making the necessary inquiries will be excused, if after inquiries made notice is given without undue delay. Where the drawer could not be found at the address given, but before action brought the holder was informed of a place where the drawer was to be found, the holder was held bound to give notice at that place. *Studdy* v. *Beesly* (1889), 60 L.T.N.S. 647.

(5) Omission to give notice excused by accident.—Omission to give notice of dishonour is also excused when the omission is caused by unavoidable circumstances, such as death, or dangerous illness of the holder or his agent, or other inevitable accident or overwhelming calamity not attributable to the default, misconduct or negligence of the party giving notice.

(6) When one of the drawers is also the acceptor.—When one of the drawers is also the acceptor, it is not necessary to give them

Sections 98-99.]

notice of dishonour, as the dishonour of the bill must necessarily have been known to that drawer who is also the acceptor, and knowledge of one in case of partners is knowledge of all. From clause (*e*), a further rule may be deduced, that notice of dishonour is not necessary in order to charge the drawer, where the drawer and the drawee or the drawer and the acceptor are the same person. The mere fact that the drawer and the drawee of a bill are partners does not give rise to the presumption that they are partners in respect of the drawing of the bill, or that the bill was drawn by one of them on behalf of both. *Jambu Ramaswamy* v. *Sundararaja Chetti*, 26 Mad. 239. Such a case does not come within the purview of clause (*e*) of the section so as to dispense with notice.

(7) When promissory note is not negotiable.—Where a promissory note is not negotiable, the indorsement of such a note does not give the indorsee any claim against the maker and indorsers. *Plimley* v. *Westley* (1835), 2 Bing. N.C. 249. The indorsee of such a note is in the position of a mere assignee of a chose in action. The instrument being not negotiable, no one would be prejudiced by its non-presentment for payment or want of notice of dishonour.

(8) When notice impliedly waived.—Clause (*g*) deals with the case in which a party entitled to notice promises to pay unconditionally the amount due under an instrument after dishonour and with full knowledge of the facts. Such a promise dispenses with notice of dishonour. Under Section 98, Cl. (*g*), of the Negotiable Act, the unconditional promise to pay need not be express. Hence, an endorsement on a promissory note that a certain amount has been paid towards the satisfaction of interest due on the note amounts to such unconditional promise to pay as dispenses with the notice of dishonour under the section. *Belgaum Bank Ltd.* v. *Bando Raghunath*, 47 B.L.R. 336.

CHAPTER IX

OF NOTING AND PROTEST

Noting.

99. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a Notary Public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reasons, if

any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the Notary's charges.

NOTES

Noting.—When a promissory note or bill of exchange is dishonoured, the holder can, after giving due notice of dishonour, sue the drawer and the indorsers. This section provides a convenient method of authenticating the fact of the dishonour. The holder may, if he so desire, adopt this method, whereby evidence of dishonour is secured. This is done by "noting". The notary or his clerk proceeds to make a formal demand upon the drawee or acceptor for acceptance or payment, as the case may be, and on refusal "notes" the bill. By "noting" is meant the minute recorded by a notary public on a dishonoured bill at the time of dishonour. Under the section, such minute may be made upon the dishonoured instrument, or upon a paper attached thereto, or partly upon each, and must contain the following particulars: (1) the fact of dishonour; (2) the date of dishonour; (3) the reasons, if any, assigned for such dishonour; (4) if the instrument has not been expressly dishonoured, the reasons why the holder treats it as dishonoured; and, (5) the notary's charges.

Noting is not compulsory in the case of an inland bill or note. The holder may or may not, as he thinks fit, have the instrument noted, and omission to do so does not in any way affect his rights thereon. Noting should be made by the notary within a reasonable time after dishonour.

Protest.

100. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a Notary Public. Such certificate is called a protest.

Protest for better security.

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a Notary Public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Sections 100-101.]

NOTES

Protest.—The protest is the formal notarial certificate attesting the dishonour of the bill, and based upon the noting. The special advantages of protest are: (1) that it affords authentic and satisfactory evidence of dishonour to a drawer or indorser living abroad, who would find it difficult to make inquiries of such dishonour, and would be compelled to rely on the representations of the holder, and (2) that under section 119, in a suit upon a dishonoured instrument, the Court shall on proof of protest presume the fact of dishonour unless and until such fact is disproved. Like noting, protest is not compulsory in the case of inland bills, and omission to have an instrument protested does not in any way affect the righs of the holder thereon.

Protest for better security.—Where the acceptor of a bill of exchange has become an insolvent, or has suspended payment, or his credit has been publicly impeached before the bill matures, the holder may have the bill protested for better security. A notary public is employed to demand better security and on its refusal protest may be made within a reasonable time. The acceptor, however, is not bound to give such security, neither has the holder an immediate right of action against the drawer and the indorsers after such protest. The holder has to wait till the maturity of the bill. The advantage of protest for better security, beyond the inherent one of having the circumstances placed on record for the information of the drawer and the indorsers, is that it enables the bill to be accepted for honour.

Contents of protest.

101. A protest under Section 100 must contain—

(*a*) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon ;

(*b*) the name of the person for whom and against whom the instrument has been protested ;

(*c*) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the Notary Public ; the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found ;

(*d*) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal ;

(*e*) the subscription of the Notary Public making the protest ;

(*f*) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

A Notary Public may make the demand mentioned in clause (c) of this section either in person or by his clerk or, where authorized by agreement or usage, by registered letter.

NOTES

Contents of protest.—In order that a protest may be valid, it must contain the following particulars, and the omission of one or more of them will render the protest invalid. The particulars of protest are:—

(1) Instrument or transcript of instrument.

(2) The names of the parties. The protest must mention the name of the party for whom and against whom the instrument has been protested.

(3) The fact and the reasons for dishonour. The protest must state not only that demand for payment, or acceptance, or better security has been made, but the reasons given by the drawee for dishonour or for refusal to give better security. If the drawee gave no answer to the demand or if he could not be found, that fact must be stated in the protest.

(4) Place and time of dishonour.

(5) The signature of the notary.

(6) Certain particulars in case of acceptance for honour and payment for honour. In the event of an acceptance for honour or a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected must be stated in the protest.

Notice of protest

102. When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the Notary Public who makes the protest.

NOTES

Notice of protest.—Notice of protest is simply notice of dishonour plus the intimation that the bill has been protested as required by law. Notice of protest is necessary to fix the liability of the parties on an instrument which requires to be protested. The drawer and

Sections 102-104.]

the indorsers require notice in order to protect their own interest, just as much when the bill has been protested as when it has not. Accordingly, this section provides that where notes and bills are required to be protested, notice of protest must be given instead of notice of dishonour. Such notice of protest, however, must be given by the notary public. The rules as to giving notice of protest are the same as those applying to notice of dishonour.

Protest for non-payment after dishonour by non-acceptance.

103. All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment in the place specified for payment, unless paid before or at maturity.

NOTES

Scope of the section.—This section provides that where a bill, payable at a place different from that of the residence of the drawee, is dishonoured by non-acceptance, it need not be presented again for payment. Such a bill can be protested for non-payment at the place specified for payment, unless it is paid before or at maturity.

Illustration

A bill is drawn on *C* in Calcutta and is payable in Bombay. The bill is dishonoured by non-acceptance. It may be protested in Bombay for non-payment without being presented again to *C* in Calcutta.

Protest of foreign bills.

104. Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

NOTES

Protest of foreign bills.—(As to what are foreign bills, see sections 11 and 12.) This section requires protest in the case of foreign bills, where such protest is necessary by the law of the place where they are drawn. The practical effect of this section, as regards proceedings in India, will be that all bills drawn out of British India must be protested, for by the law of most countries a protest is made essential in case of dishonour of a bill. But a foreign bill drawn in British India need not be protested notwithstanding that protest may be required by the law of the place where the bill is payable. Protest is absolutely necessary in case of foreign bills, and the Courts will not allow any evidence of dishonour except the evidence of protest. This section does not apply to foreign promissory notes. A bill

Sections 104-105.]

drawn upon a resident in British India is an inland bill for which no protest is necessary. The fact that the bill was drawn out of British India does not make it a foreign bill. *A. G. Kidston & Co., Ltd.* v. *Seth Bros.*, 57 Cal. 730.

When noting equivalent to protest.

104-A. For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding ; and the formal protest may be extended at any time thereafter as of the date of the noting.

NOTES

Scope of the section.—The noting of a bill is in fact an incipient protest and it must take place within the time allowed by law. The protest, however, is an amplification of the noting. The notary, after he has made his minute, may draw up the formal protest at his leisure. This section provides that whenever protest is required to be made within a specified time, it is sufficient if noting be made within that time, though the formal protest may be drawn up later on. When protest is drawn up, it relates back to the date of noting. Thus, under this section, if a bill is properly presented and noted at the time, the protest may be made by the notary at any future time.

CHAPTER X

OF REASONABLE TIME

Reasonable time.

105. In determining what is reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments ; and, in calculating such time, public holidays shall be excluded.

NOTES

Reasonable time.—The section provides that in determining what is reasonable time, the nature of the instrument, the usage of trade with regard to similar instruments, and the distance at which persons live from each other shall be taken into consideration. In addition to these, regard should be had to the situation and interest of the

Sections 105-107.]

parties, and the distance between the places where the instrument is made or drawn from that where it is to be accepted or paid. In the calculation of what is reasonable time, public holidays shall be excluded. What is reasonable time is a mixed question of law and fact. "The Jury ought to find the facts, such as, the distance at which persons live from each other, the course of post, and all other circumstances applicable to the case. But when these facts have been ascertained, the reasonableness of the time becomes a question of law which is to be determined by the Court and not the jury." (Chitty, *Bills of Exchange*, 11th Edn., p. 256.) But the Madras High Court has held that what is reasonable time is a pure question of fact and not of law. *D'Sena* v. *T. M. Nair*, 31 Mad. 364.

Reasonable time of giving notice of dishonour.

106. If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

NOTES

Reasonable time to give notice of dishonour.—This section lays down two definite rules for determining what is reasonable time in connection with giving notice of dishonour. The first paragraph of the section provides that where the holder of the instrument and the party to whom notice is given carry on business or live in different places, the notice of dishonour must be posted by the next post if there be one on the day, or on the next day after the day of dishonour. Under the second paragraph it is provided that if the parties carry on business or live in the same place, it is sufficient if the notice is despatched so that it reaches its destination on the day next after the day of dishonour.

Reasonable time for transmitting such notice.

107. A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

NOTES

Reasonable time for transmitting notice.—This section applies to the case where a party receiving notice of dishonour seeks to give notice to a prior party. The combined effect of this section and the last section is that where a party receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after the dishonour. Thus, each party is entitled to a clear day for giving notice, and one clear day is to be allowed for each step in the communication between parties who are liable on the instrument. If, however, the holder or an indorser chooses to give notice to all parties, he cannot claim as many days as there are indorsers, but is bound to give notice within the time within which he is to give notice to his immediate indorser.

CHAPTER XI

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED

Acceptance for honour.

108. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.

NOTES

Acceptance for honour.—It has been stated that a bill must be accepted by the person or persons upon whom it is drawn, otherwise the bill is dishonoured for non-acceptance. There is, however, another way in which a person can be liable on a bill, and that is, as an acceptor for honour or acceptor *supra protest*. An acceptance for honour or acceptance *supra protest* is a peculiar kind of acceptance, which is allowed when the original drawee refuses to accept or refuses to give better security when demanded by a notary. The effect of an acceptance for honour is that the bill is kept back until its maturity, and the holder is given an additional person against whom he may proceed if the bill is not paid when due.

The conditions of a valid acceptance for honour are:—

(1) That the bill must have been noted or protested for non-acceptance or for better security. It is essential that an acceptance for honour should not be given until after a regular noting or protest

Sections 108-111.]

of the bill for non-acceptance or want of better security has been drawn up.

(2) That an acceptance for honour can only take place with the consent of the holder. The holder has the option to take or refuse such acceptance and cannot be compelled to take it whether he likes it or not.

(3) That an acceptance for honour must be made by a writing on the bill.

(4) That an acceptance for honour can only be made *by a party not already liable on the bill.* A bill cannot be accepted for honour by a person whose liability on the bill is already fixed. Only a stranger can undertake liability by such an acceptance. The drawee, though he may have refused to accept the bill generally, may accept it for the honour of any party thereto, for by his first refusal he is a stranger to the bill and is not liable thereon.

(5) That an acceptance for honour must be *for the honour of any party already liable on the bill.*

How acceptance for honour must be made.

109. A person desiring to accept for honour must, by writing on the bill under his hand declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour.

NOTES

Acceptance for honour how made.—Acceptance for honour must be written on the bill by such acceptor under his hand, and the writing should declare that the acceptor accepts under protest the protested bill for the honour of the drawer, or of a particular person, whom he names, or generally for honour. The acceptor for honour, when an acceptance is given by him, writes across the bill, " Accepted S. P." (i.e. *supra protest*), or " Accepted for the honour of A. B.," naming the person for whose honour the bill is accepted.

Acceptance not specifying for whose honour it is made.

110. Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

Liability of acceptor for honour

111. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not: and such party and all prior parties are liable in their respective capacities to compensate the

acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented (or in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable), forwarded for presentment not later than the day next after the day of its maturity.

NOTES

Rights and liabilities of acceptor for honour.—Unlike the liability of an ordinary acceptor the liability of an acceptor for honour is conditional. The acceptance for honour is in its nature qualified, and amounts to a collateral engagement, whereby the acceptor for honour undertakes to pay if the original drawee upon presentment of the instrument to him should persist in dishonouring it. *Hoare* v. *Cazenove* (1812), 6 East. 391. Sections 111 and 112 lay down the conditions of his liability, which are—

(1) that the bill should at maturity be presented to the drawee for payment,

(2) that on dishonour the bill should be noted or protested for non-payment,

(3) that the bill should be presented to the acceptor for honour not later than the day next after the day of its maturity.

An acceptor for honour virtually takes the place of the person for whose honour he has accepted, both with regard to his right against prior parties and his liabilities to subsequent parties. An acceptor for honour, on paying the bill, is entitled to recover the amount from the party for whose honour he has accepted and all prior parties.

When acceptor for honour may be charged

112. An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

NOTES

(See notes to S. 111.)

Payment for honour.

113. When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, *provided that the person so paying or his agent in that behalf has previously declared before a Notary*

Sections 113-114.]

Public the party for whose honour he pays, and that such declaration has been recorded by such Notary Public.

NOTES

Payment for honour.—As a general rule, no person can, by paying the debt of another without his consent or authority, make himself his creditor. An exception is made by this section in case of negotiable instruments. Just as a person may intervene and accept for honour when a bill has been dishonoured by non-acceptance by the drawee, so *any person* may similarly intervene when a bill has been protested for non-payment after having been duly accepted. The intervening party may pay *supra protest* for the honour of *any person liable* thereon.

The conditions essential for the payment for honour are:—

(1) That the bill must have been noted or protested for non-payment.

(2) That the person paying or his agent must declare before a notary public the party for whose honour he pays.

(3) That such declaration has been recorded by such notary public.

(4) Payment for honour *must* be made for the honour of *any party liable to pay the bill.*

(5) Payment for honour may be made by any person *whether he is already liable on the bill or not.*

A payment in disregard of the provisions of this section would not operate as a payment *supra protest* but a mere voluntary payment. The person paying would be in the position of an indorsee of an overdue bill and will be affected by all defects of title attaching to the bill at the date of its maturity. When a bill has been paid *supra protest* it ceases to be negotiable. *Ex parte, Swan* (1886), L.R. 6 Eq. 344.

Right of payer for honour.

114. Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid with interest thereon and with all expenses properly incurred in making such payment

NOTES

Rights and duties of payer for honour.—A payer for honour, on paying a bill of exchange for honour, acquires all the rights of a

holder whom he pays, and is entitled to all the remedies of the holder on the instrument. But these rights and remedies are enforceable only against the person for whose honour he pays and all parties prior to such person. All parties subsequent to the party for whose honour it is paid are discharged. A payer for honour, on paying to the holder the amount of the bill and the notarial charges incidental to dishonour, is entitled to receive both the bill itself and the protest. The payer for honour is entitled to recover all sums paid by him together with interest and expenses properly incurred in making such payment. A payer for honour acquires not only the rights of the holder, but is also subject to the liabilities of the holder. A payer for honour, therefore, cannot sue the prior parties liable to him unless they have received notice of dishonour.

Drawee in case of need.

115. Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

NOTES

Scope of the section.—(As to "drawee in case of need", See S. 7.) By this section a bill of exchange is not said to be dishonoured until it has been dishonoured by the drawee in case of need. This section lays down, that where a drawee in case of need is mentioned in a bill of exchange, it is obligatory on the holder to present the instrument to him, and it is not considered to be dishonoured unless and until it has been dishonoured by such drawee. The non-presentment of the bill to the drawee in case of need absolves the drawer from liability. *Bahadur Chand* v. *Gulab Rai*, A.I.R. 1929, Lah. 577. Where a bill of exchange is duly accepted by, but dishonoured when presented for payment to the drawee in the first instance, it cannot be validly presented for payment to the drawee in case of need if it was not first presented to him for acceptance. *Dore* v. *Karachiwalla & Co.*, 40 B.L.R. 473.

Acceptance and payment without protest.

116. A drawee in case of need may accept and pay the bill of exchange without previous protest.

Section 117.]

CHAPTER XII

OF COMPENSATION

Rules as to compensation.

117. The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee shall, be determined by the following rules : —

(*a*) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it ;

(*b*) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places ;

(*c*) an indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment ;

(*d*) when the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places ;

(*e*) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

NOTES

Rules as to compensation.—It becomes necessary, when a negotiable instrument has been dishonoured, to determine the measure of damages, so that the holder may know the amount for which he ought to sue. This section lays down rules for determining the compensation which the holder is entitled to receive in case of dishonour of a negotiable instrument.

(*a*) **Compensation to the holder.**—The holder is entitled to receive: (1) the amount of the instrument, (2) interest on the principal sum as calculated in accordance with the rules mentioned

Section 117.]

in sections 79 and 80, (3) expenses properly incurred in presenting, noting and protesting the instrument.

(*b*) **Re-exchange.**—Clauses (*b*) and (*d*) relate to "re-exchange." Re-exchange is the measure of damages occasioned by the dishonour of a bill in a country different to that in which it was drawn or indorsed. When a person sought to be charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two countries. "If an ordinary bill of exchange is drawn in one country upon person in another and distant country the holder who has contracted for the transfer of funds from the one country to the other almost necessarily sustains damages by the dishonour of the bill. He must take other means to put himself in funds in the country where the bill was payable. Hence the right to re-exchange which is the measure of those damages." *Williams* v. *Ayers* (1877), 3 A.C. 133, 146. As the holder of the instrument sustains loss to the extent of the amount mentioned in the instrument on the day of dishonour, the rate of exchange should be taken for calculation as of the rate prevailing on the date of dishonour. In *re British American Continental Bank Ltd.* (1922), 2 Ch. 575, 589; *S. S. Celia* v. *Volturno* (1921), A.C. 544; *Muller Maclean & Co.* v. *Atanlla & Co.*, 51 Cal. 320.

(*c*) **Compensation to indorser.**—An indorser, who has paid the amount due under the instrument, is entitled to the amount so paid with interest at six per cent per annum from the date of payment until tender or realization together with all expenses caused by the dishonour and non-payment. But an indorser who has paid a bill or note is entitled to the amount so paid only if at the time of payment he was liable on the instrument. The indorser is only entitled to charge interest at the rate of six per cent per annum on the amount paid by him, even though interest at a higher rate is mentioned in the instrument.

(*d*) **Re-exchange to indorser.**—[As to re-exchange, see notes to clause (*b*) above].

(*e*) **Re-draft.**—The bill mentioned in clause (*e*) is called a *re-draft*. The party entitled to compensation is enabled to draw a bill payable at sight or on demand on a party liable to compensate him for the amount due to him together with all expenses properly incurred by him. The re-draft must be accompanied by the dishonoured instrument and the protest thereof if there be any. In case the draft is dishonoured the party on whom it is drawn is liable to make compensation in accordance with the rules laid down in this section in the case of the original bill.

CHAPTER XIII

SPECIAL RULES OF EVIDENCE

Presumptions as to negotiable instruments—

118. Until the contrary is proved, the following presumptions shall be made :—

of consideration;

(*a*) that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration ;

as to date;

(*b*) that every negotiable instrument bearing a date was made or drawn on such date ;

as to time of acceptance;

(*c*) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity ;

as to time of transfer;

(*d*) that every transfer of a negotiable instrument was made before its maturity ;

as to order of indorsement;

(*e*) that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon ;

as to stamp;

(*f*) that a lost promissory note, bill of exchange or cheque was duly stamped ;

that holder is a holder in due course.

(*g*) that the holder of a negotiable instrument is a holder in due course : Provided that where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud or for unlawful consideration the burden of proving that the holder is a holder in due course lies upon him.

NOTES

(*a*) **Presumption as to consideration.**—In the case of an ordinary contract the law does not presume consideration, and the party seeking to enforce it must aver and prove that the contract was made for a good consideration. But the contrary rule prevails in the case of negotiable instruments. In the case of contracts on negotiable instruments consideration is presumed till the contrary is proved. Every negotiable instrument is presumed to be made,

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drawn, accepted, indorsed, negotiated or transferred for a consideration. This privilege conceded to negotiable instruments is available not only between the original parties, but also between others who by indorsements or otherwise become *bona fide* holders of the instrument. The presumption of consideration, however, may be rebutted by proof that the instrument had been obtained from its lawful owner by means of fraud or undue influence or for an unlawful consideration. In a suit on a negotiable instrument the defendant may avoid liability by proof of want of consideration for his becoming a party to the instrument. If the defendant wants to dispute the plaintiff's title to recover the money on the ground of want of consideration, he must allege such want of consideration, and prove the same. *Percival* v. *Frampton* (1835), 2 C.M. & R. 180. If the defendant makes out a good case by proving want of consideration, the onus of proving that there was consideration is cast upon the plaintiff.

A suit on a promissory note instituted against the undivided sons of a Hindu promisor governed by the Mitakshara law, after the father's death, cannot be regarded as one against the heirs or representatives of the promisor, because it only seeks to enforce the Hindu law theory of pious obligation of the sons in respect of the property which the sons have taken by survivorship. The pious obligation can arise only on the assumption of the existence of a debt due by the father. In such a case the onus of proving the existence of the debt must *prima facie* be laid on the creditor who can call in aid the presumption permissible under the general law of evidence, namely, section 114 of the Indian Evidence Act, and not the presumption under section 118 (*a*) of the Indian Negotiable Instruments Act. *Narayan Rao* v. *Venkatappayya* (1937), Mad. 299.

Government Promissory Notes are negotiable instruments within the meaning of the Act, and the rule mentioned in this section as to presumption of consideration applies to them.

Professional money-lenders sued a young man recently come of age to recover certain loans of money alleged to have been advanced by them to him on promissory notes. The defendant, who under the will of his father was entitled to a large property but had not yet come into possession of it, was of an extravagant and reckless character. He pleaded, as to part of the consideration for the notes, that he did not receive it and as to a further part, that the consideration was immoral. In dealing with the case the Court laid down the following proposition, not as a rule of law, but as a guide in considering the evidence in such a case:

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"That upon the above facts the ordinary presumption that a negotiable instrument has been executed for value received was so much weakened that the defendant's allegation that he had not received full consideration was sufficient to shift the burden of proof upon the money-lenders (the plaintiffs) the obligation of satisfying the Court that they had paid the consideration in full." *Moti Gubchand* v. *Mohomed Mehdi Tharia Topan*, 20 Bom. 367; *Kadher Mal* v. *Kunwar Shes Narain*, 1943, All. 163.

(*b*) **Presumption as to date.**—Where a negotiable instrument is dated, the date shall, unless the contrary is proved, be deemed to be the true date of the drawing or making thereof.

(*c*) **Presumption as to time of acceptance.**—Unless the contrary appears from the instrument, every accepted bill of exchange is presumed to have been accepted within a reasonable time after its issue and before its maturity, though there is no presumption as to the exact date of its acceptance. Where a bill payable three months after date was accepted, the acceptance bore no date, and the drawee attained majority the day before the bill matured, it was presumed that the drawee accepted the bill while he was a minor. *Roberts* v. *Bethell* (1852), 12 C.B. 778.

(*d*) **Presumption as to time of transfer.**—Unless the contrary appears from the date of indorsement on the instrument, every transfer of a negotiable instrument is *prima facie* presumed to have been made before its maturity. *Parkin* v. *Moon* (1836), 7 C. & P. 408; *Lewis* v. *Parker* (1836), 4 A. & E. 838. There is no presumption as to the exact date of negotiation.

(*e*) **Presumption as to order of indorsements.**—Unless the contrary appears from the instrument, when there are two or more indorsements on a negotiable instrument, each indorsement is presumed to have been made in the order in which it appears on the instrument. This presumption, however, may be rebutted by evidence, as where successive indorsers of a promissory note were allowed to prove that as between themselves they were co-sureties. *Macdonald* v. *Whitfield* (1883), L.R. 8 A.C. 733.

(*f*) **Presumption as to stamp.**—Unless the contrary is proved, a lost promissory note, bill of exchange or cheque is presumed to have been duly stamped. A similar presumption will also arise when a negotiable instrument has been destroyed.

(*g*) **Presumption that a holder is a holder in due course.**—Unless the contrary is proved, the presumption of law is that the holder of a negotiable instrument is a holder in due course. Every

Section 118.]

holder of a negotiable instrument is presumed to have paid consideration for it and to have taken it in good faith. *D. N. Shaha* v. *Bengal National Bank,* 47 Cal. 871; *Royal Bank of Scotland* v. *Rahim,* 49 Bom. 270. But if it is proved that a negotiable instrument was obtained from its lawful owner or from any person in lawful custody thereof by means of an offence or fraud, or was obtained from the maker or acceptor thereof by means of an offence or fraud or for an unlawful consideration, the onus of proof is shifted and the holder has to prove that he is a holder in due course. *Daulatram* v. *Nagindas,* 15 Bom. L.R. 333; *Banku Behari Sikdar* v. *Secretary of State for India,* 36 Cal. 239. Under such circumstances, the holder must prove (1) that he gave consideration; (2) that at the time he took the instrument he did so without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title; (3) that he became the holder of the instrument before the amount mentioned in it became payable.

The rule stated in this clause, as to the shifting of onus of proof when fraud or illegality is proved, is to be read subject to the provisions of section 53, which says that the holder of a negotiable instrument who derives his title from a holder in due course has the rights thereon of that holder in due course. Thus, if in a suit on a negotiable instrument, the defendant proves that the instrument was obtained by a previous holder by means of an offence or fraud, the plaintiff can succeed by showing either that he is a holder in due course, or that subsequent to the taint of fraud or illegality the instrument was negotiated to a holder in due course, and that the plaintiff has derived his title from such holder in due course.

Illustrations

(1) *A* makes a note payable to *B*. *B* indorses it to *C*. *C* sues *A* on the note. It is proved that *A* made the note for an illegal consideration. *C* must prove that he is a holder in due course. *Bailey* v. *Bidwell* (1841), 13 M. & W. 73

(2) *A*, the holder of a bill, negotiates it to *B* to get it discounted *B* fraudulently negotiates it to *C*, who transfers it to *D* *D* sues the acceptor. The acceptor proves *B*'s fraud. *D* must prove that he is a holder in due course. *Smith* v. *Braine* (1851), 16 Q.B. 244.

(3) *A* makes a note payable to bearer. It passes through several hands and ultimately comes into the hands of *B*. *B* sues *A* on the note. At the trial it is proved that the note was stolen from *A*. *B* must prove that he is a holder in due course. *Raphael* v. *Bank of England* (1855), 17 C.B. 162.

(4) An acceptance is given in renewal of a bill which turns out to be a forgery. The genuine bill is negotiated to *A*, the holder. *A* sues the acceptor. Evidence is given of the forgery. *A* must prove that he is a holder in due course. *Mather* v. *Maidstone* (1856), 18 C.B. 273.

Sections 119-120.]

Presumption on proof of protest

119. In a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

NOTES

Presumption on proof of protest.—A protest being properly drawn up a presumption is raised in its favour that whatever is stated in it has been regularly performed. This presumption will, however, arise if the protest is drawn up in conformity with the provisions of sections 99, 100 and 101 of the Act. The meaning of the present section is that on proof of protest the Court shall presume that the instrument was duly presented for acceptance or payment, as the case may be, and that it was not accepted or not paid. Protest operates as a *prima facie* evidence of dishonour.

Estoppel against denying original validity of instrument.

120. No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

NOTES

Estoppel against maker, drawer, and acceptor for honour of the drawer.—This section precludes the maker of a note, the drawer of a bill or cheque, and the acceptor for the honour of the drawer, from denying the validity of the instrument as originally made or drawn. The maker and the drawer, by their respective agreements, are directly responsible for bringing these documents into existence, and so they ought not be allowed to deny that the instrument as originally made or drawn by them was not valid. Similarly, an acceptor for the honour of the drawer is bound by all estoppels which bind the drawer, and he is not permitted to deny the validity of the bill as originally drawn. But in a suit by the holder in due course on a bill or note, the drawer is not, under this section, precluded from setting up, the plea that he never drew or made the instrument and that his name to it had been forged. A person is not precluded under this section of the Act from denying the validity of the note on the ground that he was a minor at the date of the note, as the specific provision in section 120 is subject to the general rule enacted in section 26. *Chengal Roya Chetty* v. *Nainappa Naicker*, 117 I.C. 133. The ordinary acceptor of a bill is not mentioned in this section. By section 117 of the Indian Evidence Act, it is enacted that no

Sections 120-121.]

acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it. The acceptor of a bill, however, may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Estoppel against denying capacity of payee to indorse.

121. No maker of a promissory note and no acceptor of a bill of exchange payable to order shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity at the date of the note or bill, to indorse the same.

NOTES

This section has been amended by the Negotiable Instruments (Amendment) Act, 1919. By section 5 of the Amending Act, the words "payable to order" have been substituted for the words "payable to, or to the order of a specified person."

Estoppel against the maker and acceptor.—This section estops the maker of a note and the acceptor of a bill from denying the payee's capacity to indorse. By their respective engagements the maker and the acceptor acknowledge the capacity of the payee to receive the money, and if the instrument be made payable to the order of a specified person, they admit the capacity of the payee to order the money to be paid to another person by an indorsement on the instrument. They cannot, thereof, in a suit by a holder in due course, say, that the payee was incapable of indorsing the instrument. Thus, in a suit on a note by a holder in due course, the maker will not be permitted to say that the payee was a minor, or that he was insane at the time of making the note. Similarly, an acceptor of a bill will not be allowed to show, in a suit by a holder in due course, that the payee was a minor; *Jones* v. *Darch* (1817), 4 Price 300; or that she was a married woman incapable of contracting. *Smith* v. *Marsack* (1848), 6 C.B. 486. But the maker of a note and the acceptor of a bill are not estopped from denying the genuineness or validity of the payee's indorsement.

Though a promisor cannot, in a suit on a negotiable instrument plead that somebody other than the payee named in the instrument is the person entitled to sue, nor plead discharge by payment to the alleged real owner, yet, as between the payee named in the instrument and persons other than the promisor, there is no rule which precludes the admissibility of evidence showing that the payee was only a benamidar for another. *Venkatarama Reddiar* v. *Valli Akkal*, 58 Mad. 693.

Estoppel against denying signature or capacity of prior party.

122. No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

NOTES

Estoppel against indorser.—The indorser, by his contract of indorsement, contracts with the indorsee that the original parties to the instrument were competent to bind themselves as maker, drawer, or acceptor, and that the indorsers were competent to contract as indorsers and so indorse the instrument. Further the indorser contracts that the signatures of all prior parties, through whom he derives his title, are genuine. Accordingly, when a subsequent holder brings a suit on a negotiable instrument, no indorser will be allowed to deny the signature or the capacity to contract of any prior party to the instrument. The indorser of a negotiable instrument, however, is, under this section, not estopped from denying the genuineness or validity of the instrument, for instance, that the instrument was one payable to bearer on demand and hence invalid as offending against section 26 of the Paper Currency Act. *Alagappa Chetty* v. *Alagappa Chettiar,* 44 Mad. 187.

CHAPTER XIV

OF CROSSED CHEQUES

Cheque crossed generally.

123. Where a cheque bears across its face an addition of the words " and Company " or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words " not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

NOTES

Open and crossed cheques.—The cheques dealt with in the previous sections of the Act were those which could be presented to the banker upon whom they were drawn, and paid over the counter of the bank. Such cheques are known as " open " cheques. When open cheques are in circulation it is obvious that great risks are run in connection with them. If a drawer loses an open cheque, any finder of it can go to the bank and cash it, unless its payment has

Sections 123-124.]

been stopped. The finder may also transfer it to a holder in due course, who is entitled to the money represented by the cheque. If its payment is stopped the holder in due course can sue the drawer upon it, unless the drawer can show that the holder is not a holder in due course. Again, if a cheque is stolen, any person who becomes a holder in due course has a title against the world, unless the cheque is payable to order and the thief forges the indorsement of the payee. In that case the holder has no title, since he has taken the cheque under and through a forged indorsement. It was to avoid, as far as possible, the losses incurred by open cheques getting into the hands of wrong parties that the custom of *crossing* was introduced.

A *crossing* is a direction to the paying bank to pay the money generally to a bank or to a particular bank, as the case may be, and when this has been done the whole purpose of the crossing has been served. *Akrokerri Atlantic Mines Ltd.* v. *Economic Bank* (1904), 2 K.B. 464. The object of the crossing is to secure payment not to any particular bank, but to *a banker*, in order that it may be easily traced for whose use the money was received, and to compel the holder to present it through a quarter of known respectability and credit. *Bellamy* v. *Marjoribanks* (1852), 7 Exch. 389, 402. The crossing operates as a caution to the banker. But the mere crossing of a cheque in no wise affects the negotiability of the cheque. *Smith* v. *Union Bank of London* (1875), 1 Q.B.D. 31

General crossing.—A cheque is said to be crossed generally when it bears across its face an addition of:—

(1) the words "and company" or any abbreviation thereof, between two parallel transverse lines, either with or without the words "not negotiable"; or

(2) two parallel transverse lines simply, either with or without the words "not negotiable".

For Specimens of general crossings, see Appendix II.

Cheque crossed specially

124. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

NOTES

Special crossing.—A special crossing is constituted, when in addition to the general crossing mentioned in the last section, the

Sections 124-125.]

name of a banker is written on the face of the cheque, either with or without the word " not negotiable."

For Specimens of special crossings, see Appendix II.

Crossing after issue.

125. Where a cheque is uncrossed, the holder may cross it generally, or specially.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words " not negotiable."

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

NOTES

Who may cross.—Section 77 (I) of the English Bills of Exchange Act provides that a cheque may be crossed generally or specially by the *drawer*. Though there is no provision in the Negotiable Instruments Act on the subject, in practice, unless he is particularly requested not to do so, as when cash is required at once from the bank, the drawer crosses the cheque before issuing it. Where a drawer omits to cross a cheque the holder may cross it generally or specially. Where a cheque is crossed generally the holder may, by adding the name of a banker to the general crossing, convert it into a special crossing. Either the drawer or holder may also add the words " not negotiable." Again when a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection. This is the only case where the Act allows a second special crossing by a banker and for the purpose of collection. *Akrokerri Mines* v. *Economic Bank* (1904), 2 K.B. 465, 472.

The crossing authorised by the Act is a material part of the cheque and it is unlawful for any person to obliterate, or to add to, or alter the crossing, except as allowed by this section. This section says that:—

(1) The holder may cross an uncrossed cheque.

(2) The holder may turn a general crossing into a special crossing.

(3) The holder may add the words " not negotiable."

(4) A banker may cross an uncrossed cheque, or a cheque crossed generally he may cross it specially to himself; or if crossed

Sections 125-127.]

specially to himself, he may again cross it specially to another banker for collection.

The crossing of a cheque is an instance of an alteration which is authorized by the Act (See S. 87).

Payment of cheque crossed generally.

126. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Payment of cheque crossed specially.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

NOTES

Payment of crossed cheques.—This section lays down the duties of a banker making payment of crossed cheques. It provides that where a crossing is general, it is a direction to the banker on whom the cheque is drawn not to pay it otherwise than to a banker, and that where the crossing is special it is the duty of the banker on whom it is drawn to pay it only to the banker to whom it is crossed, or his agent for collection. Section 129 mentions the consequences of non-compliance with the provisions of this section.

Illustrations

(1) *A* draws a cheque upon the Union Bank. *B* is the payee of the cheque. The cheque is crossed generally. *B* receives the cheque and indorses it. This cheque cannot be paid over the counter. *B* pays the cheque into his own banking account at the Hudson Bank. The cheque is collected and the amount is credited to *B*'s account. *A*'s account being debited at the Union Bank.

(2) In the above illustration *B* may cross the cheque specially to the Hudson Bank, and the same result will follow. If it is specially crossed to the Robins Bank, the latter bank will cross it again to the Hudson Bank for collection.

As there is no privity of contract between the holder and the drawee of a cheque, a banker incurs no liability to the holder for refusing to pay a crossed cheque. The banker is only liable to his customer, the drawer. Still, this section casts upon the banker the duty to pay the cheque in a particular manner, and a breach of its provisions renders him liable to the true owner under section 129.

Payment of cheque crossed specially more than once.

127. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

Sections 127-128.]

NOTES

Second special crossing.—The only case in which the Act allows a second special crossing is where the banker in whose favour it is made is an agent of the first banker for collection. This section prohibits the payment of a cheque crossed specially more than once, except where the second crossing is to a banker as agent for collection. It is necessary to specify in the second special crossing, that the banker in whose favour it is made is an agent for collection on behalf of the first banker.

Payment in due course of crossed cheque.

128. Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

NOTES

Payment in due course of crossed cheques.—This section is framed for the protection of the banker. The banker on whom a crossed cheque is drawn must pay it in due course. In order that payment of a crossed cheque may amount to a payment in due course it is necessary that the banker on whom it is drawn should pay it in good faith without negligence, and in accordance with the provisions of section 126, that is, if crossed generally then to a banker, if crossed specially then to the banker to whom it is crossed or his agent for collection being a banker. If a banker pays a crossed cheque in due course he can debit his customer, the drawer, with the amount so paid, even though the amount of the cheque does not reach the hands of the true owner. But if the banker deals with the cheque and makes a payment in contravention of sections 10 and 126, his protection is gone, and any loss which ensues must fall upon him. The true owner of the cheque is entitled to recover the amount of the cheque from the person who received the same, as, under the provisions of this section, if the payment is made out of due course, he has no title to the cheque. If the cheque were payable to order, and the indorsement of the payee is forged, the drawer or the payee, as the case may be, can recover the amount of the cheque from the person who received payment thereof, if he can find him. *Ogden* v. *Benas* (1874), L.R. 9 C.P. 513.

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Payment of crossed cheque out of due course.

129. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

NOTES

Payment out of due course of crossed cheques.—This section lays down the consequences of contravening the rules laid down in section 126, as to the payment of cheques crossed generaly and specially. If a banker pays a cheque out of due course, that is, in contravention of section 126, and the amount of the cheque is not received by the true owner, he cannot debit his customer with the amount. *Bobbett* v. *Pinkett* (1876), 1 Ex. D. 368, 372. Further, though as a general rule, the drawee of a cheque is not liable to the holder for refusing to pay a crossed cheque, still, if a banker pays a cheque in contravention of the direction of the crossing, he is liable, under this section, to the true owner for the breach of his statutory duty. The banker is liable to compensate the true owner of the cheque for any loss sustained by him owing to the cheque having been paid by him in contravention of the provisions of section 126. This section must be read subject to section 89, which says that where a cheque is presented for payment, which does not at the time of presentation appear to be crossed or to have had a crossing, which has been obliterated, payment thereof by a banker liable to pay according to the apparent tenor thereof, at the time of payment and otherwise in due course, discharges the banker from all liability thereon, and such payment shall not be questioned by reason of the cheque having been so crossed.

In respect of a sale of certain properties belonging to a company, which was wound up under the orders of the Court, a cheque was issued upon a bank for the amount of the price by the purchaser in favour of the official liquidator. The amount of the cheque was paid by the bank to the official liquidator across the counter and the money was misappropriated by him. In a suit by the new official liquidator against the bank for the recovery of the amount of the cheque, it was held that the bank was liable to pay the amount. The bank had committed a breach of a statutory duty and was negligent in paying to the official liquidator direct over the counter. The payment was not made in due course within the meaning of section 10 of the Act, and the banker was not entitled to claim the benefit

Sections 129-130.]

of section 85 of the Act. The bank must be deemed to have known that the official liquidator ought to have a bank account and that he could not collect the amount of the cheque except through his bank. The negligent payment of the cash to the official liquidator facilitated his misappropriation of the money. *Madras Provincial Co-operative Bank Ltd.* v. *South Indian Match Factory Ltd.* I.L.R. 1945, Madras 328.

Cheque bearing "not negotiable"

130. A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable," shall not have, and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

NOTES

Effect of non-negotiable crossing.—A further protection is given by this section in the case of crossed cheques by making them "not negotiable." The object of this section is to afford to the drawer or holder of a cheque, who is desirous of transmitting it to another person, as much protection as can reasonably be afforded to him against dishonesty or actual miscarriage in the course of transit. This is done by crossing the cheque with the words "not negotiable" so as to make it difficult to get the cheque so crossed cashed, until it reaches its destination. The addition of the words "not negotiable" entirely takes away the main feature of negotiability, which is, that a holder with a defective title can give a good title to a subsequent holder in a due course. "It is very important that everyone should know that people who take a cheque which is upon its face not negotiable and treat it as a negotiable security must recognize the fact that if they do so they take the risk of the person for whom they negotiate it, having no title to it." Per *Halsbury L. C. in Great Western Railway Co.* v. *London & County Banking Co.* (1901), A.C. 414. The effect of a cheque crossed "not negotiable," so far as the rights of the transferee are concerned, is to place the cheque on the same footing as an overdue bill or note. (See S. 59). A person who takes a cheque crossed "not negotiable" has no better title to keep such a cheque than his immediate transferor, and the true owner can always reclaim it or the amount of it, no matter what has been done to it, although the banker who pays the cheque and the banker who collects it are protected, provided the payment and the collection have been made in good faith and without negligence. (See Ss. 128 and 131). The crossing of a cheque "not negotiable," however, does not render the instrument non-transferable; it only deprives the instrument of the incident of negotiability.

Sections 130-131.]

If the holder has a good title, he can still transfer it with a good title; but if the transferor has a defective title his transferee is affected by such defects, and he cannot claim the rights of a holder in due course by proving that he purchased the instrument in good faith and for value.

Illustrations

(1) A cheque payable to bearer is crossed generally and is marked "not negotiable." The cheque is lost or stolen, and comes into the possession of *B* who takes it in good faith and gives value for it. *B* pays the cheque into his own bank, and his banker presents it and obtains payment for his customer from the bank upon which the cheque is drawn. The banker paying the cheque and the banker collecting the cheque are both exonerated from liability under Sections 128 and 131. But *B* is liable to refund the money to the true owner for the cheque is not a negotiable instrument. *B* does not obtain any better title than his immediate transferor, who had either stolen or found the cheque and was not the true owner of it. As regards the true owner, *B* is in no better position than his transferor.

(2) A cheque crossed "not negotiable" was drawn in favour of a firm *B & Co.* *A*, one of the partners in fraud of his co-partner *B*, indorsed the cheque to *P* who cashed it. *Held*, that *B*, who under the terms of the partnership agreement was entitled to the cheque could recover the amount from *P*. *Fisher* v. *Roberts* (1890), T.L.R. 354 C.A.

(3) *B*, by means of false pretences, obtained from *C*, a cheque crossed "not negotiable," took it to a bank who paid it. *C* sued the bank for conversion of the cheque. *Held*, that as *B* had obtained the cheque by fraud, he had no title to it, and could not give to the bank any title to the cheque or the money, and that the bank was liable for the amount of the cheque *Great Western Rly. Co* v. *London and County Banking Co.* (1901), A.C. 414.

Non-liability of banker receiving payment of cheque.

131. A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself, shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

Explanation.— A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.

NOTES

Protection of collecting banker.—Section 128 protects a *paying* banker who pays a crossed cheque, and it has been seen that excepting the risk as to the forgery of the drawer's signature, he is practically free from all liability so long as he pays the cheque in due course. The present section affords protection to a banker who

Section 131.]

collects a crossed cheque on behalf of a customer. When one person deals with the goods of another without his authority he is liable to an action for conversion, and but for the present section, the position of the banker would not be different from that of any other person. The present section says that where a banker receives a crossed cheque from a customer for collection, and obtains payment of it on his customer's behalf, the fact that the customer's title to the cheque was defective would not render the banker liable in conversion to the true owner. This protection is very great, but, the conditions essential for the protection are:—

(1) That the collecting banker acts in *good faith and without negligence.* But the standard of diligence required is that derived from the practice prevailing among bankers. Further, the negligence mentioned in the section must be in collecting the cheque, and not in opening an account wherein stolen cheques were paid in by a supposed customer. *Commissioners of Taxation* v. *English Scottish & Australian Bank* (1920), A.C. 683. In considering the liability of a collecting bank in receiving payment on behalf of a customer of a cheque the title to which is defective, the test of negligence is whether the transaction of paying in any given cheque, coupled with circumstances antecedent and present, was so out of the ordinary course that it ought to have aroused doubts in the banker's mind and caused him to make inquiry. *Robinson* v. *The Central Bank of India Ltd.*, 9 Rang. 585. A banker who in good faith collects for a customer a cheque signed *per pro* is not guilty of negligence merely because he does not inquire whether the drawer had authority to draw the cheque. *Moreson* v. *London County & Westminster Bank, Ltd.* (1914), 3 K.B. 356. But a banker was held guilty of negligence and not entitled to the protection of this section, where he did not notice a discrepancy between the name of the payee as given in the body of the instrument, and the name given in the indorsement. *Bavins* v. *London South Western Bank* (1899), 81 L.T. 655.

Under Section 131, in order to escape the liability imposed by the general law upon a person or a party who converts the goods belonging to the true owner thereof, the banker must discharge the burden of establishing that he received payment on behalf of a customer of his of a cheque not belonging to the customer but to some one else in good faith and without negligence.

Negligence means want of reasonable care in reference to the interest of the true owner. The test of negligence is whether the transaction of paying in any given cheque coupled with the circumstances antecedent and present was so out of the ordinary

Section 131.]

course that it ought to have aroused doubts in the banker's mind and caused him to make inquiry. *Bapulal Premchand* v. *The Nath Bank Ltd.*, 48 B.L.R. 393.

(2) That the collecting banker receives payment of the crossed cheque *for a customer*. A banker cannot obtain the protection afforded by this section if the person for whom he obtains payment is not his customer. As to the meaning of the term *customer*, see Notes to section 31.

(3) That the collecting banker acts only *to receive such payment*. This section will be restricted to the case where the banker is acting as an agent for collection and will not be extended to the case where the banker is himself the holder. When a banker credits a customer's account with the amount of a cheque before clearance, it is a question of fact whether the banker holds the cheque as a holder for value or as an agent for collection only. *Re Farrows Bank* (1923), 1 Ch. 41, 48, C.A. Thus, where a customer had overdrawn his account with the bank, and the cheque was paid to extinguish that overdrawn account, it was held that the bank was a holder for value of the cheque and not a mere agent for collection. *McLean* v. *Clydesdale Banking Co.* (1833), 9 A.C. 95, 115; *A. L. Underwood Ltd.* v. *Barclays Bank* (1914), 1 K.B. 799.

(4) That the protection only applies to *crossed cheques*, and that the crossing must have been made *before* the cheque gets into the hands of the collecting banker. A banker to whom an uncrossed cheque is sent for collection, cannot by crossing it himself, claim the protection afforded by this section. *Gordon* v. *London City and Midland Bank* (1902), 1 K.B. 242, 272, on appeal (1903), A.C. 240.

Explanation.—The explanation to this section has been added by section 2 of the Negotiable Instruments (Amendment) Act XVIII of 1922. Where a customer pays into his bank the cheque of a third party, the usual practice is for the banker to credit the customer's account with the amount of the cheque, and subsequently, if the same is dishonoured by non-payment, to debit him with the amount thereof. But, as soon as the banker credits his customer's account with the amount of the cheque, he becomes a holder for value of the cheque, and that being so, the House of Lords held, that he was receiving payment of the cheque on his own account, and not on account of his customer. The banker, therefore, was not entitled to the protection afforded by this section. *Capital & Counties Bank* v. *Gordon* (1903), A.C. 240. In order to extend the protection of this section to collecting bankers, even in cases where they credit their customer's account with the amount of a cheque before actually receiving payment for it, that the Explanation to the section was

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added. The banker is now protected notwithstanding that he credits his customer's account with the amount of a cheque before he receives payment thereof. Since the passing of this Explanation, as well as before, when a banker credits a customer's account with the amount of the cheque, it is a question of fact whether the banker holds the cheque as a holder for value or as an agent for collection only. *Re Farrows Bank* (1923), 1 Ch. 41, 48.

CHAPTER XV

OF BILLS IN SETS

Set of bills.

132. Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

Exception.— When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

NOTES

Bills in sets.—Instead of being drawn as one document, a bill is sometimes drawn in several parts, especially when it has to be sent from one country to another. This is known as drawing a bill "in a set." The object of drawing a bill in a set is to avoid the delay and inconvenience which may arise from the loss or miscarriage of it, and to facilitate the most prompt and speedy presentment for acceptance and payment. It is entirely the drawee's option whether the bill is to be drawn in a set or not. Each of the parts is required to be numbered, and must refer to the other parts, but all these parts together form one set, and in law the whole set constitutes one bill. If one part of a set omits reference to the rest, that part becomes a separate bill in the hands of a *bona fide* holder, for the reference in each of these parts to the other parts of the set is in the nature of a condition of payment, that is, that it shall be only payable so long as the others remain unpaid. Where a bill is drawn in a set, the drawer should sign each part and must deliver all the parts. A person who negotiates a bill of exchange drawn in a set is bound to deliver up all the parts in his possession,

Sections 132-134.]

but by negotiating one part he does not warrant that he has the rest. *Pinard* v. *Klockman* (1863), 32 L.J.Q.B. 82. But where a transferor agreed to deliver up an accepted bill drawn in a set he is bound to deliver up all the parts in existence. *Kearney* v. *West Grenada Co.* (1856), 26 L.J. Ex. 15. But, where one part is sent to the drawee for acceptance all the remaining parts must be handed over to the payee. Only one part of a set is required to be stamped and only one part is accepted by the drawee.

Exception. Acceptance of bills in a set.—The acceptance of a bill drawn in a set may be written on any one part but one part only. See S. 7, clause (3). If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill. *Holdsworth* v. *Hunter* (1830), 10 B. & C. 449. Similarly would an indorsee be liable if he indorses two or more parts to different persons.

For Specimen of a bill drawn in a set, see Appendix II.

Holder of first acquired part entitled to all.

133. As between holders in due course of different parts of the same set he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

NOTES

Scope of the section.—Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues, is, as between such holders, deemed to be the true owner of the bill. The holder of the first acquired part is entitled to: (1) the possession of all the other parts, and (2) to the money represented by the bill. But this right will not affect the rights of the person who in due course accepts or pays the first part presented to him.

CHAPTER XVI

OF INTERNATIONAL LAW

Law governing liability of maker, acceptor or indorser of foreign instrument.

134. In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

Illustration

A bill of exchange was drawn by *A* in California, where the rate of interest is 25 per cent and accepted by *B*, payable in Washington, where the rate of interest is 6 per cent. The bill is indorsed in British India, and is dishonoured. An action on the bill is brought against *B* in British India. He is liable to pay interest at the rate of 6 per cent only; but, if *A* is charged as drawer, *A* is liable to pay interest at the rate of 25 per cent.

Law of place of payment governs dishonour.

135. Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

Illustration

A bill of exchange drawn and indorsed in British India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

Instrument made, etc. out of British India but in accordance with its law.

136. If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in accordance with the law of British India, the circumstances that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon in British India.

Presumption as to foreign law.

137. The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of British India, unless and until the contrary is proved.

CHAPTER XVII

NOTARIES PUBLIC

Power to appoint Notaries Public.

138. The Local Government may, from time to time, by notification in the official *Gazette*, appoint any person, by name or by virtue of his office, to be a Notary Public under this Act and to exercise his functions as such within any local area, and may, by like

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notification, remove from office any Notary Public appointed under this Act.

Power to make rules for Notaries Public.

139. The Local Government may, from time to time, by notification in the official *Gazette*, make rules consistent with this Act for the guidance and control of Notaries Public appointed under this Act, and may, by such rules (among other matters), fix the fees payable to such Notaries.

SCHEDULE.

(Enactments repealed.)

Repealed by the Repealing and Amending Act, 1891 (XII of 1891).

APPENDIX I

HUNDIS

Hundi.—A bill of exchange in the vernacular language is generally called a *hundi*. The term *hundi* was formerly applicable to native bills of exchange, a promissory note being called a "teep," and in certain parts it is now called a "rukha." *Hundis* are negotiable instruments written in an oriental language. They are sometimes bills of exchange and at other times promissory notes, and are subject to local usages and are unaffected by the provisions of the Indian Negotiable Instruments Act. A bill of exchange may include a *hundi*; but a *hundi* does not include a bill of exchange. *Biswanath* v. *Govinda*, 23 C.W.N. 534. A *hundi* may be written on more papers than one provided the aggregate value of the stamp papers used represents the correct value of the stamp to which such *hundi* is liable. These *hundis* have been in circulation in India long before the Negotiable Instruments Act came into operation, and usages attaching to them varied with the locality in which they circulated. There are a few well-known kinds of hundis, which on account of their importance and the peculiarities of their incidents, require special mention. These are:—

Shah Jog hundi.—A shah means a respectable and responsible person, a man of worth and substance known in the bazaar. A *shah jog hundi* means a *hundi* which is payable only to a respectable holder. It is not the same as a *hundi* payable to bearer. There is no rule of Hindu Law, customary or otherwise, which would have the effect of making a *shah jog hundi* transferred without an indorsement. *Lalla Mal* v. *Kesho Das*, 26 All. 493; *Bansidhar* v. *Jwala Prasad*, 16 Bom. L.R. 434. As a *shah jog hundi* is only payable to a person who is a *shah*, the drawee, before paying the same, has to satisfy himself as to the respectability of the holder. A hundi payable to a *shah* is paid on the responsibility of the shah. If he be not known to the drawee inquiry is to be made about him, and the amount of the *hundi* is not paid till that enquiry is found to identify him or speak to his respectability. *Ganes Das Ram Narayan* v. *Lachmi Narayan*, 18 Bom. 570. If the drawee of a *shah jog hundi* has without negligence paid it to a *shah* who derives title through a forged instrument, the *shah* is, according to the mercantile usages of Bombay, bound to refund the amount to the drawee with interest at 6 per cent from the date of payment to the date of refund, provided the drawee on discovering the forgery lost no time in communicating the fact of forgery to, and in claiming refund from, the *shah*.

Dalvatram Shri Ram v. *Bulakidas Khemchand*, 6 B.H.C. (O.C.), 24, 25.

A *shah jog hundi* differs from a bill of exchange in: (1) that as a general rule, the acceptance of the drawee is not written across it, but, the particulars are only entered in the drawee's books, and (2) that, as a general rule, the *hundi* is very frequently not presented for acceptance before it is either due or overdue.

According to the well-established custom among shroffs relating to *shah jog hundis*, the *shah* who obtains payment of a *shah jog hundi* is in the event of the *hundi* turning out to be a false, fraudulent, stolen or forged *hundi*, bound to refund the amount of the *hundi* with interest, unless he produced the actual drawer or the person who committed the fraud. The *shah* does not guarantee the solvency of the drawer, he guarantees the genuineness of the *hundi*. A drawee will not pay a *hundi* unless he has funds in his hands belonging to the drawer, or he is willing to give him credit. And he will not pay on presentation of a *shah jog hundi* to a *shah* unless he is satisfied as to the respectability of the *shah* as he looks to him in case of anything afterwards going wrong with the *hundi*. The respectability of the *shah* is a matter only for the drawee to consider, as it is difficult to conceive that a defendant would repudiate his liability to refund on the ground that he was not a respectable person. The claim to a refund against a *shah* who has received payment of a *hundi* on the ground that the *hundi* is a forgery must be made as soon as possible after the forgery has been discovered so as to enable the *shah* to protect himself. *Bansidhar* v. *Jwala Prasad*, 16 Bom. L.R. 434.

On the 12th June 1912, the plaintiff received in Bombay a letter from *R* at Harpalpur advising despatch of a railway receipt for 300 bags of linseed stated to have been consigned by *R* from Ranipur, and asking the plaintiff to sell the goods and in the meantime to accept and pay on presentment two *shah jog hundis* for Rs. 3,000 each. The same day one of those *hundis* was presented by defendant No. 1 for payment and the other by one *G*. No payment was made. The railway receipt was received on the 11th. The plaintiff delivered it to *K* and received Rs. 5,600 from him. The plaintiff then paid the amount of the *hundi* to defendant No. 1 in full, and to *G* he paid the balance of what he had received from *K*. The goods, however, never arrived and the plaintiff took back the receipt and refunded the amount to *K*. Subsequent enquiries showed that both the *hundis* and the railway receipt were fabricated. This came to the knowledge of the plaintiff by the end of August; but it was not until the 25th of September that the plaintiff gave notice to the defendant No. 1 to refund. The plaintiff sued to recover the money

paid by him from defendant No. 1 placing reliance on the custom that the *shah* who obtained payment of *shah jog hundi* was, in the event of the *hundi* turning out to be fraudulent, bound to refund the amount of the *hundi* with interest unless he produced the actual drawer or the person who committed the fraud. *Held* that the plaintiff who would have no equity to recover back the amount from the defendant No. 1 who was paid not as a *shah* but as the endorsee for collection of a *hundi* purporting to have been drawn against the security of a railway receipt; that assuming that there might be liability imposed on the first defendant by reason of the payment to refund or to trace the *hundi* to its source, that would only be the case provided notice was given within a reasonable time of the discovery of the forgery; that the *hundi* has been "traced to its source" within the meaning of the Marwari Association Rules before the first defendant had received intimation of the fraud. *R. D. Sethna* v. *Jwalaprasad Gayaprasad,* 16 Bom. L.R. 972.

A *shah jog hundi* passes from hand to hand by delivery and requires no indorsement, till it reaches a *shah* who, after making due inquiries to secure himself, would present it to the drawer for acceptance or for payment. When a *shah jog hundi* bears a special indorsement, it ceases to be a bearer *hundi,* and any person taking it after such indorsement should comply with the requisitions as they appear on the face of the *hundi* and examine the title of the holder in the light of the indorsement. The negotiability of the *shah jog hundi* as a bearer *hundi* comes to an end as soon as it reaches the hands of the *shah* who presents it for acceptance or for payment. If after acceptance the *shah* endorses it to a person of straw, the drawee is within his right in refusing to honour the *hundi,* for the one condition which applies to these *hundis* is that at the time of payment there should be an immediate relationship established between the *shah and the drawee.* The drawee is entitled to have the immediate responsibility to the *shah* established between himself and the *shah. Champaklal* v. *Keshrichand,* 28 Bom. L.R. 897.

Jokhmi hundi.—A *jokhmi hundi* is always drawn on or against goods shipped on the vessel mentioned in the *hundi.* A *jokhmi hundi* implies a condition that the money shall be payable only in the event of the arrival of the goods against which the *hundi* is drawn. A *jokhmi hundi* is in the nature of a policy of insurance, with this difference, that the money is paid beforehand, and is to be recovered if the ship arrives safely. A *jokhmi hundi* appears to have been designed with a double purpose, namely, to put the drawer of the *hundi* in funds, and at the same time to effect an insurance upon the goods themselves. The *hundi* is drawn by the consignor on the consignee and negotiated with the insurer at a price, which is less

than the amount of the *hundi* (at the current rate of exchange) by the amount of the premium of insurance. If the goods arrive safely, the insurer may obtain them, or their value as stated in the *hundi*. The *hundi* is an authority to the consignee to pay for the goods or deliver them up to the holder. If the goods are lost the holder cannot claim payment, but he is entitled to be paid in full in case of a partial loss or damage. *Jadowjee Gopal* v. *Jetha Shamji*, 4 Bom. 333, 344.

Jawabee hundi.—The nature of the transaction known by the name of *jawabee hundi* is as follows: "A person desirous of making a remittance writes to the payee and delivers the letter to a banker, who either indorses it on to any of his correspondents near the payee's place of residence, or negotiates its transfer. On the arrival, the letter is forwarded to the payee, who attends and gives his receipt in the form of an answer to the letter, which is forwarded by the same channel to the drawer of the order." (Macpherson, "*Contracts*," p. 166).

Nam jog hundi.—A *Nam jog hundi* is a *hundi* payable to the party named in the bill or his order. The bill may or may not be accompanied by a descriptive role of the party in whose name it is granted. When there is a descriptive role it cannot be indorsed or transferred, but when there is no such description it can be indorsed. (Macpherson, "*Contracts*," p. 168).

Zickri chit.—The *Zickri chit* or letter of protection is in use all over India in connection with Marwari *hundis*. It is furnished to the holder by some prior party to the *hundi*, on the *hundi* being refused acceptance or when a refusal is likely to occur. It is addressed to some person residing in the town where the *hundi* is payable, and if the reference is considered unsatisfactory, the bank or the holder for the time being can claim a fresh *chit* or demand immediately payment. It is, however, generally found that the person addressed in the *chit* accepts the *hundi* and pays it at maturity. The acceptance is given in writing on the *zickri chit*. According to the usage of shroffs a *hundi* may be accepted to honour under what is called a *zickri chit* without being noted or protested.

I. O. U.

An I. O. U. is an abbreviation of the words "I owe you." It is merely a memorandum of indebtedness to the holder by the person making it. It is not a negotiable instrument and requires no stamp. For all practical purposes, however, it is as valuable as a negotiable instrument when there is a question of suing for a debt, which has

been created between the parties to it. If, in an action to recover money lent, the plaintiff produces an I. O. U. signed by the defendant, the document is evidence of an account stated between the parties, though not of the amount of money lent.

APPENDIX II

Section 4.

Specimens of promissory notes:—

BOMBAY, 6th November 1929.

Rs. 5,000-0-0.

On demand I promise to pay William Smith the sum of five thousand rupees.

HENRY BROWN.

BOMBAY, 6th November 1929.

Rs. 5,000-0-0.

Three months after date I promise to pay William Smith the sum of five thousand rupees.

HENRY BROWN.

BOMBAY, 6th November 1929.

Rs. 5,000-0-0.

On demand I promise to pay William Smith or Order the sum of five thousand rupees with interest thereon at 6 per cent per annum.

HENRY BROWN.

BOMBAY, 6th November 1929.

Rs. 5,000-0-0.

On demand I promise to pay William Smith or Bearer the sum of five thousand rupees with interest thereon at 6 per cent per annum.

HENRY BROWN.

BOMBAY, 6th November 1929.

Rs. 5,000-0-0.

Three months after date, I promise to pay William Smith or $\frac{\text{Bearer}}{\text{Order}}$ the sum of five thousand rupees.

HENRY BROWN.

BOMBAY, 6th November 1929.

Rs. 5,000-0-0.

Three months after date I promise to pay to my own Order the sum of five thousand rupees.

HENRY BROWN.

BOMBAY, 6th November 1929.

Rs. 5,000-0-0.

Three months after date I promise to pay Bearer the sum of five thousand rupees.

HENRY BROWN.

Section 5.

Specimens of bills of exchange:—

BOMBAY, 6th November 1929.

Rs. 5,000-0-0.

Three months after date pay to William Smith or Order, the sum of five thousand rupees, for value received.

HENRY BROWN.

To

JAMES JOHNSON,
8, Beadon Square,
Calcutta.

BOMBAY, 6th November 1929.

Rs. 5,000-0-0.

Three months after date pay to William Smith or Bearer, the sum of five thousand rupees, for value received.

HENRY BROWN.

To

JAMES JOHNSON,
8, Beadon Square,
Calcutta.

BOMBAY, 6th November 1929.

Rs. 5,000-0-0.

Three months after date pay to my Order, the sum of five thousand rupees, for value received.

HENRY BROWN.

To

JAMES JOHNSON,
8, Beadon Square,
Calcutta.

BOMBAY, 6th November 1929.

Rs. 5,000-0-0.

Three months after date pay Bearer, the sum of five thousand rupees.

HENRY BROWN.

To

JAMES JOHNSON,
8, Beadon Square,
Calcutta.

BOMBAY, 6th November 1929.

Rs. 5,000-0-0.

On demand pay to William Smith or Order, the sum of rupees five thousand, for value received.

HENRY BROWN.

To

WILLIAM SMITH,
18, Beadon Square,
Calcutta.

Section 6.

Specimens of cheques:—

No. B 146789.

Bombay, ... 19

THE BANK OF JAPAN LIMITED.

Pay .... *or Bearer*

Rupees .....

.....

Rs. .....

No. B 146789.

Bombay 6th November *1929.*

THE BANK OF JAPAN LIMITED.

Pay William Smith *or Bearer*

Rupees Five hundred twenty-five and ten annas and six pies only.

Rs. 525/10/6.

Henry Brown.

Section 7.

Specimens of a bill with the drawee in case of need:—

BOMBAY, 6th November 1929.

Rs. 1,000-0-0.

Three months after date pay to the Order of William Smith rupees one thousand, for value received.

HENRY BROWN.

To

JAMES JOHNSON,
8, Beadon Square,
Calcutta.

In case of need with
The Hudson Bank, Ltd., Calcutta.

Specimens of acceptance of bills of exchange:—

BOMBAY, 6th November 1929.

Rs. 5,000-0-0.

Three months after date pay to William Smith or Bearer, the sum of five thousand rupees, for value received.

HENRY BROWN.

To

JAMES JOHNSON,
8, Beadon Square,
Calcutta.

James Johnson

BOMBAY, 6th November 1929.

Rs. 5,000-0-0.

Three months after date pay to my Order, the sum of five thousand rupees, for value received.

HENRY BROWN.

To

JAMES JOHNSON,
8, Beadon Square,
Calcutta.

Accepted
James Johnson

BOMBAY, 6th November 1929.

Rs. 5,000-0-0.

Three months after date pay to Bearer, the sum of five thousand rupees.

HENRY BROWN.

To

JAMES JOHNSON.
8, Beadon Square,
Calcutta.

Accepted payable at
Bank of India
James Johnson

BOMBAY, 6th November 1929.

Rs. 5,000-0-0.

Three months after date pay to William Smith or Order, the sum of five thousand rupees, for value received.

HENRY BROWN.

To

JAMES JOHNSON,
8, Beadon Square,
Calcutta.

Accepted payable at Imperial Bank of India only and not elsewhere
James Johnson

Section 16.

Specimens of indorsements:—

1. Henry Brown.

---

2. Pay Thomas Robinson or order
James Richardson.

---

3. Thomas Robinson

---

4. Pay to George French
James Philips.

---

5. Pay to Jonathan George
George French.

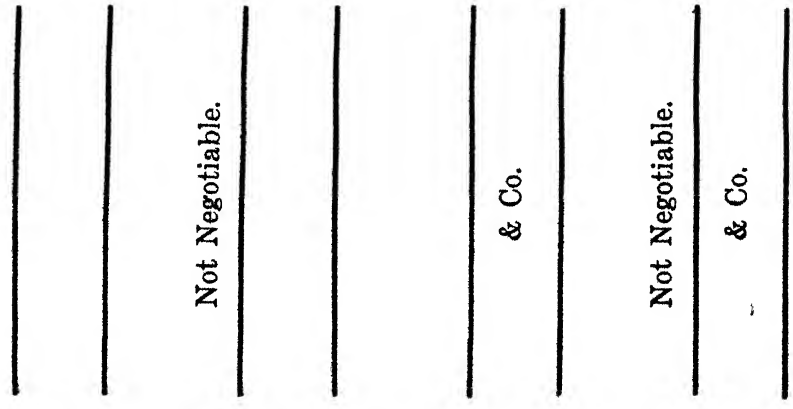
---

6. Jonathan George.

The indorsements respectively marked (1), (3), (6), are indorsements in blank. The indorsements respectively marked (2), (4), (5), are indorsements in full.

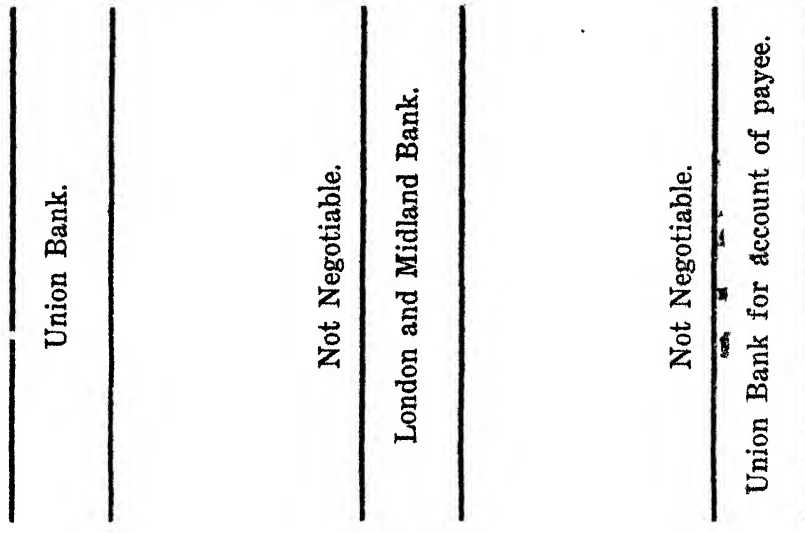
Section 123.

Specimens of general crossing:—



Section 124.

Specimens of special crossing:—



Section 132.

Specimen of a bill in a set:—

BOMBAY, 6th November 1929.

Rs. 5,000-0-0.

Three months after sight of this FIRST OF EXCHANGE (second and third of the same tenor and date being unpaid) pay to William Smith or order the sum of five thousand rupees for value received.

HENRY BROWN.

To

M. JEAN BERTHELOT,
Paris.

Specimen of an I. O. U.:—

Bombay, 6th November 1929.

To

Alfred Brown,

I. O. U. Rs. 500.

William Smith

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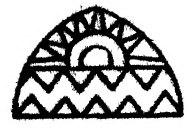

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